



STATE OF NEW MEXICO
NEW MEXICO ENVIRONMENT DEPARTMENT

REQUEST FOR PROPOSALS

RFP No. 00-667-00-12307

**ADMINISTRATIVE SUPPORT FOR NMED
RADIATION CONTROL BUREAU**

January 29, 2010

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I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The New Mexico Environment Department's Radiation Control Bureau is requesting proposals from qualified individuals for the purpose of procuring obtaining administrative support for the NMED Radiation Control Bureau, located in Santa Fe, New Mexico 87502.

The purpose of this Request for Proposals (RFP) is to select one or more qualified contractors to provide the Agency with such professional services for the defined scope of work under hourly rate contract. The Agency may assign individual projects/tasks under this contract on an as-needed basis in the best interest of the New Mexico Environment Department and the State of New Mexico.

B. SUMMARY SCOPE OF WORK

The scope of work shall consist of:

- (1) Perform receptionist duties for the Radiation Control Bureau in Santa Fe (i.e. answer phone, greet visitors, open mail);
- (2) prepared daily deposits of fees received from radiologic technologist applicants and from radioactive material licensees in compliance with State Treasurer/NMED requirements and protocols;
- (3) process applications for x-ray registrants, radiologic technologists; including administrative review of all new applications and renewals to ensure applications are complete; log/update information into database and prepare and maintain files approximately 2106 files;
- (4) prepare certificates and ensure that appropriate payments have been received and posted before certificates are issued;
- (5) mail out certificates upon issuance and send out expiration notices on a monthly basis;
- (6) maintain Radiologic Technologists files to ensure that information is up-to-date and readily available – approximately 2037 files
- (7) assist with x-ray registration by entering new information and updating existing information;
- (8) transcribe phone calls from customers requesting radon test kits including name, address and number of test kits requested;
- (9) mail out indoor radon test kits;
- (10) maintain radon database and input test results as they become available; and
- (11) assist public with questions regarding completion of Radiologic Technologist applications for state licensure.

C. SCOPE OF PROCUREMENT

The scope of the procurement includes the technical and professional services required to accomplish the tasks defined in the scope of work found in Section IV.A page 20 for the duration of the contract(s). Provide administrative support for the Radiation Control Bureau by preparing daily deposits, receiving visitors, handling information requests, updating databases, scheduling meetings, processing purchase orders, travel vouchers and other fiscal documents and performing other clerical duties as requested.

The contract(s) shall begin immediately after the award, or as soon as possible thereafter, and continue for four (4) years from the date of the contract award.

D. PROCUREMENT MANAGER

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

Patsy Sandoval, Project Procurement Coordinator
Radiation Control Bureau, New Mexico Environment Department
PO Box 5469, Santa Fe, NM 87502-5469
1190 St. Francis Drive, Santa Fe, NM
Office Ph #(505) 476-3063
Email to patsy.sandoval@state.nm.us

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

All deliveries via express carrier should be addressed as follows:

NM State Purchasing Division
c/o Fran Dunaway, IT Business Analyst
1100 St. Francis Drive Room 2016
Santa Fe, New Mexico 87505

E. DEFINITION OF TERMINOLOGY

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

"Agency" means the New Mexico Environment Department.

"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.

"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.

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

"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”: 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:

- (ASD) NMED - Administrative Services Division
- (ASD-FSB) Administrative Services Division - Financial Services Bureau
- (ASD-PB) Administrative Services Division - Purchasing Bureau
- (DFA) New Mexico Department of Finance and Administration
- (EPA) Environmental Protection Agency
- (GASB 34) Governmental Accounting Standards Board Statement No. 34
- (GSD) New Mexico General Services Department
- (MST) Mountain Standard Time
- (NMAC) New Mexico Administrative Code
- (NMED) New Mexico Environment Department
- (RFP) Request for Proposal
- (RCB) NMED Radiation Control Bureau

F. BACKGROUND INFORMATION

1. Mission Statement:

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

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

- Providing clear articulation of our goals, standards, and expectations in a professional manner so that employees and the public can make informed decisions and be actively involved in setting priorities;
- Promoting environmental awareness through the practice of open and direct communication and sound decision-making by carrying out the mandates and initiatives of the department in a fair and consistent manner.

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

4. GASB 34:

The Department implemented the provisions of Governmental Accounting Standards Board Statement No. 34 (GASB 34) effective July 1, 1999. As a part of GASB 34, there is a new reporting requirement regarding the local government's infrastructure (road, bridges, etc.). The Department does not own any infrastructure assets and therefore is unaffected by this requirement. Financial Statements issued for all fiscal years covered by this contract must be issued in compliance with GASB 34.

5. Fund Structure:

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

6. 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 that contains the following information:

Procurement Regulations, 1.5.2 NMAC
Regulations Governing the Per Diem and Mileage Act, DFA Rule 95-1

The following U.S. Environmental Protection Agency (EPA) web site contains links to quality requirements for non-EPA organizations that collect environmental data:

<http://www.epa.gov/quality/exmural.html>

II. CONDITIONS GOVERNING THE PROCUREMENT

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

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.	Issuance of RFP	Agency	1/29/10
2.	Acknowledgement of Receipt of RFP (Deadline by 5:00 p.m. MST)	Potential Offerors	2/2/10
3.	Pre-proposal Conference	Agency & Potential Offerors	N/A
4.	Distribution List Response	Potential Offerors	2/4/10
5.	Deadline to Submit Written Questions	Potential Offerors	2/9/10
6.	RFP Amendments and Response to Written Questions	Agency	2/12/10
7.	Deadline to Submit Proposal (Must be received by Agency by 3:00 p.m. MST)	Offerors	02/23/10
8.	Proposal Evaluation	Evaluation Committee	02/25/10
9.	Selection of Finalists	Evaluation Committee	03/08/10
10.	Deadline for Best & Final Offers	Finalists	03/12/10
11.	Select Contractor(s) and Finalize Contract(s)	Agency & Offeror(s)	Approximately 03/26/10
12.	Award Contract(s)	Agency Secretary & SPD	Approximately 04/09/10
13.	Protest Deadline	Offerors	Approximately 04/23/10

B. EXPLANATION OF EVENTS

The following paragraphs describe the activities listed in the sequence of events shown in Section II.A -Sequence of Events.

1. Issuance 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) and the State Purchasing Division's web page (www.generalservices.state.nm.us/spd) and as hard copy located in the Procurement Manager's office (see Section I.D page 2). Hard copies may also be provided to potential offerors who express interest to the Agency.

2. Acknowledgement of Receipt

Potential offerors should hand deliver or return by facsimile or by registered or certified mail this RFP's "Acknowledgement of Receipt Form" that appears in Appendix A pages 31-32 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 day on February 2, 2010. FAILURE TO RETURN THIS FORM SHALL CONSTITUTE A PRESUMPTION OF RECEIPT AND REJECTION OF THE RFP, AND THE POTENTIAL OFFEROR'S ORGANIZATION NAME SHALL NOT APPEAR ON THE DISTRIBUTION LIST.

3. Pre-Proposal Conference

A pre-proposal conference will not be held. Mountain Standard Time at the offices of the Hazardous Waste Bureau, located at 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico. 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.

4. Distribution List Response

The procurement distribution list will be used for the distribution of any RFP amendments.

5. Deadline to Submit Written Questions

Potential offerors may submit additional written questions as to the intent or clarity of this RFP until close of business on February 9, 2010. All written questions must be addressed to the Procurement Manager. Questions may be submitted to the Procurement Manager via electronic mail (see Section II.C.26 page 16). Questions received after this date will not be addressed.

6. RFP Amendments and Response to Written Questions

The Agency will make any RFP amendments and responses to written questions available on the World Wide Web through the Agency's Home Page www.nmenv.state.nm.us and <http://www.generalservices.state.nm.us/spd/> or as hard copy located in the Procurement Manager's office (see Section I.D pages 2). Responses to written questions will be available within five (5) business days after the question submittal deadline.

The Procurement Manager must receive additional written requests for clarification of distributed answers and/or amendments no later than seven (7) days after the answers and/or amendments were issued.

7. Deadline for Proposal Submission

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 4:00 P.M. MOUNTAIN STANDARD TIME ON February 23, 2010. Proposals received after this deadline will not be accepted. The date and time will be recorded on each proposal.

Proposals must be addressed and delivered to the State Purchasing Division. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the "Administrative Assistant RCB - Request for Proposals." Proposals submitted by facsimile 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.

8. Proposal Evaluation

The Evaluation Committee will identify responsive offers and evaluate responsive proposals in accordance with Section V pages 28-30 and procedures approved by the Procurement Manager. 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 DURING THIS TIME.

9. Selection of Finalists

The Evaluation Committee will select and Procurement Manager will notify the finalists within approximately fifteen (15) days from the proposal submittal deadline. Only finalists will be invited to participate in the subsequent steps of the procurement.

10. Deadline for Best and Final Offers From Finalists

The Agency may ask finalists to submit revisions to their proposals for the purpose of obtaining best and final offers. Finalists must submit best and final offers in writing within five (5) business days after notification by the Agency.

11. Select Contractor(s) and Finalize Contract(s)

The Evaluation Committee will select the winning contractor(s) within approximately two (2) weeks after the deadline for Best and Final Offers. The Procurement Manager will notify the winning contractor(s) shortly thereafter.

The contract(s) will be finalized with the most advantageous offeror(s) as soon as possible after selection of the winning contractor(s). 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 finalist without undertaking a new procurement process or to cancel the procurement as the Agency may deem in the best interest of the State.

12. Award Contract(s)

After review of the Evaluation Committee Report, the recommendation of the Agency management and the signed contract(s), will be awarded after approved by the State Purchasing Agent.

The award(s) is subject to completion of contract negotiations and appropriate State approvals. The contract(s) may be awarded to the offeror(s) whose proposal is most advantageous to the Agency, taking into consideration the evaluation factors set forth in the RFP. The proposal(s) selected may or may not have received the most points.

A performance bond may be required for the total amount of the contract to be furnished within 24 hours of the date of notification of award. Each proposal shall identify the contractor's bonding capacity and its bond carrier.

13. Protest Deadline

Any protest by an offeror must be timely and in conformance with Section 13-1-172 NMSA 1978 and applicable procurement regulations. The protest period for responsible offerors shall begin on the day following the contract award and will end as of close of business fifteen (15) days thereafter. Protests must be written and must

include the name and address of the protestor and the RFP number. It must also contain a statement of grounds for protest including appropriate supporting exhibits, and it must specify the ruling requested from the State Purchasing Agent. The protest must be delivered to the State Purchasing Agent at the following address:

Michael C. Vinyard
State Purchasing Agent
Joseph Montoya Building Room 2016
1100 St. Francis Drive
Santa Fe, New Mexico 87505

Mailing Address: P.O. Drawer 26110
Santa Fe, NM 87502-0110

PROTESTS RECEIVED AFTER THE DEADLINE WILL NOT BE ACCEPTED.

C. GENERAL REQUIREMENTS

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

1. Acceptance of Conditions Governing the Procurement

Submission of a proposal constitutes acceptance of the Conditions Governing the Procurement and the Evaluation Factors contained in Section IX of this RFP.

2. Incurring Cost

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

3. Prime Contractor Responsibility

Any sub-contract that may result from this RFP shall specify that the contractor is solely responsible for fulfillment of the contract with NMED. NMED will make contract payments to only the prime contractor. It is the responsibility of the prime contractor to assure that all subcontractors are properly licensed, certified, or have the appropriate training and experience to successfully complete the work. Any drilling subcontractors must be properly licensed, pursuant to the requirements of 19.27.4 NMAC.

4. Subcontractors

With the prior approval of NMED, the use of a project team, a group of qualified firms and individuals, and/or subcontracting of services are permissible. Use of teams, groups

or subcontractors must be clearly explained in the proposal. The prime contractor shall be wholly responsible for the entire performance whether or not subcontractors or team members are used.

5. Amended Proposals

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

6. Offerors' Rights to Withdraw Proposal

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

7. Proposal Offer Firm

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

8. Disclosure of Proposal Contents

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

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

any continuing prohibition on the disclosure of confidential data.

9. No Obligation

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

10. Cancellation

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

11. Sufficient Appropriation

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

12. Contract Cancellation

Any contract awarded as a result of this RFP may be terminated for failure to provide adequate deliverables within the agreed upon time frames, non-performance of tasks, for missing mutually agreed upon deliverable work plan dates, or any other reason as determined by NMED. Such termination will be effected by sending written a notice to the contractor. The contractor will accept as final NMED's decision as to terminate the contract.

12. Legal Review

NMED requires that all offerors agree to be bound by the General Requirements contained in this RFP and the contract attached as Appendix E. Any offeror concerns must be promptly brought to the attention of the Procurement Manager.

13. Governing Law

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

14. Basis for Proposal

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

15. Liability Insurance

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

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

16. EXECUTIVE ORDER 2007-049 STATE OF NEW MEXICO HEALTH COVERAGE REQUIREMENT

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

1. 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:

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

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

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

2. 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.

3. 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://insurenewmexico.state.nm.us/>

17. Contract Terms and Conditions

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

Should an offeror object to any of NMED's terms and conditions, that offeror must

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

Offerors must provide a brief discussion of the purpose and effect of each proposed change followed by the specific proposed alternate wording. All contracts for professional services are subject to the review and approval of DFA pursuant to Section 13-1-118, NMSA 1978 and 2.40.2, 1.4.1 NMAC.

18. Contract Deviations

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

19. Offeror Qualifications

The Evaluation Committee may make such investigations as necessary to determine the qualifications and 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 qualified and experienced offeror or fails to submit a responsive offer as defined in NMSA 1978, Sections 13-1-83 and 13-1-85.

20. Right to Waive Minor Irregularities

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

21. Change in Contractor Representatives

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

22. Notice

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

23. Department Rights

NMED reserves the right to accept all or a portion of an offeror's proposal. However, NMED will give preference to those proposals that appropriately address and demonstrate ability complete work for all three phases of the Scope of work.

24. Right to Publish

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

25. Ownership of Proposals

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

26. Use of Electronic Versions of this RFP

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

27. Electronic Mail Address Required

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

28. Access

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

29. General Liability

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

III. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

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

B. NUMBER OF COPIES

Offerors shall deliver one (1) original and five (5) identical copies of each proposal to the person and location specified in Section V.C on or before the closing date and time for receipt of proposals. Please label which of your submitted proposals is the original copy. One electronic copy can be substituted for one of the five identical copies of the proposal. An electronic copy cannot be substituted for the original copy.

C. NUMBER OF PAGES IN THE PROPOSAL

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

D. PROPOSAL FORMAT

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

E. PROPOSAL ORGANIZATION

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

INDEX TAB	CONTENTS
a)	Letter of Transmittal
b)	Table of Contents
c)	Summary of Background and History of Employment
d)	Qualifications as Demonstrated by Experience

- e) Past Record of Performance
- f) Technical Approach for Scope of Work
- g) Signed Certification Statement
- h) Response to Agency Terms and Conditions
- i) Offeror's Additional Terms and Conditions (If Any)
- j) Other Supporting Material

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

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

F. LETTER OF TRANSMITTAL

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

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

G. MANDATORY SPECIFICATIONS

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

VI. SPECIFICATIONS

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

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

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

B. QUALIFICATIONS AS DEMONSTRATED BY EXPERIENCE

The successful firm, team or group shall demonstrate that the offeror has the ability to provide staff, subcontractors or project partners with a good working knowledge of landfill siting investigations, permit application preparation, and successful oversight of landfill operations, as related to siting, permitting, constructing, operating and properly closing a tire monofill. Documentation demonstrating the firm's or project team's availability and details regarding the offeror's available technical staff, expertise and services necessary to complete the Scope of Work, including Section III must be submitted. Include a narrative that clearly identifies the number of years of experience you, your firm's or other project partners have providing similar services. Document relevant expertise, qualifications, and experience via short descriptions of at least three similar completed or on-going projects by engineers, geologists, hydrogeologists, certified operators, and/or other project partner(s) or subcontractor(s) that would be assigned to this project. These summaries must include enough information to establish relevant experience, expertise, and competence. Include the name of a facility, site location, length of time services have been or were provided, type of services, permitting time-frames, contact person and telephone number.

C. PAST RECORD OF APPLICABLE EXPERIENCE

Offerors must provide a narrative, table and or list that addresses your firm's, and/or project partner's performance record. Include a list of solid waste permitting processes that your firm or project team members have been involved with to assist with rating your proposal for this requirement. Provide three (3), nor more than five (5) client references. Include contact names, current telephone numbers, and e-mail addresses (if available). References will be checked. We will not attempt to obtain correct contact numbers if they are found to be incorrect during our check.

V. EVALUATION

A. EVALUATION POINT SUMMARY

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

		<u>Points</u>
1.	PROJECT APPROACH	
	Applicants demonstration of ability to perform administrative/ receptionist duties including list of references;	150
	Applicants' demonstration of capability to implement and adhere to State Treasurer/DFA/State Purchasing/NMED financial requirements and protocol;	250
	Applicant 's demonstration of computer knowledge including State's Share Program; and use of NMED databases	200
	Application's demonstration of basic filing skills and list of references	50
2.	QUALIFICATIONS AND EXPERIENCE	
	Relevant qualifications and experience	100
3.	COST EFFECTIVENESS OF SERVICES PROVIDED.	
	Total Cost	250
	=====	
	Total	1,000

B. EVALUATION FACTORS AND PROCESS

1. Each offeror's proposal will be reviewed for compliance with the mandatory requirements as stipulated within the RFP. A proposal will be deemed non-

responsive if it does not contain all of the items listed in Section VI. Proposals deemed non-responsive will be eliminated from further consideration.

2. The Evaluation Committee may use other sources of information to perform their evaluation, as specified in Section VI.
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 I.B. Within the scoring criteria framework, as detailed in Section V. A, the evaluation team reserves the right to adjust any and/or all technical merit scores based on information provided during the oral presentations and clarifications and updates to and refinements of the written proposals as originally submitted.
5. The responsive offeror whose proposal is most advantageous to NMED, taking into consideration the evaluation factors in Section V and any oral presentations, will be recommended for a contract award. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

C. POINT ALLOCATION

The allocation of points will be based on the following:

1. **QUALIFICATIONS AND EXPERIENCE** – Up to 500 points will be awarded based upon the offeror's staff experience, and comparable relevant history of successful completion of similar duties.
2. **PROJECT APPROACH** - Up to 100 points will be awarded based upon the individuals understanding of NM State Government fiscal requirements and protocols. and willingness to accept responsibility for the completion of assigned administrative duties.
3. **COST EFFECTIVENESS**

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

$$a+b= \text{total points awarded}$$

a = The Grand Total Cost, as shown in Appendix C.

b = Evaluation of Completeness and Quality of Cost Tables as requested in Section VIII (K) (up to 400 points awarded). Evaluation team scores will be averaged.

If more than five responses are received, the proportional point schedule will be modified to allow for scoring of additional offerors.

EXAMPLE SCORE: For the lowest total cost offeror (note example number used as sample for calculation understanding only)

300 Points awarded as this example offeror provided the lowest cost estimate for services

This score of 300 will be added to: “b” the average score for Completeness and Quality of Cost Tables (this example the same offeror above received **125 points**) for completeness and quality: Resulting in a total cost effectiveness score = **425**

The evaluation of “a” above will be based on the total proposed costs as listed on the cost table form provided in Appendix C. Ratings for criteria “b”, Evaluation of Completeness and Quality of Cost Tables will be based on information provided in Section VIII.K.1 (a-f) The Department reserves the right to eliminate proposals with unrealistically low costs, inadequate basis for cost estimates, or incomplete or unclear cost tables.

APPENDIX A

Acknowledgment of Receipt Form

REQUEST FOR PROPOSALS
RFP #: 00-667-00-12307
ADMINISTRATIVE SUPPORT
RADIATION CONTROL BUREAU
SANTA FE, NM

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

The acknowledgment of receipt should be signed and returned to the Procurement Manager no later than **5:00 p.m. Mountain Standard Time on 2010** via facsimile, or U.S. mail. 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: _____

Phone No.: _____

TITLE: _____

Fax No.: _____

E-MAIL: _____

ADDRESS: _____

CITY: _____

STATE: _____

ZIP CODE: _____

SIGNATURE: _____

DATE: _____

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

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

Ms. Patsy Sandoval
Environmental Protection Division
Radiation Control Bureau – Room S2100
1190 St. Francis Drive
PO Box 5469
Santa Fe, New Mexico 87502-5469

APPENDIX B

Mandatory Requirements Checklist

- _____ Signed Letter of transmittal
- _____ Copies – one original and five copies
- _____ Twenty five pages in length (Section IV.C)
- _____ Summary of background and history of firm, team, group, as necessary(Section V.A)
- _____ Qualifications as demonstrated by experience (Section V.B)
- _____ Past record of performance (Section V.C)
- _____ Project team specifics, and names of major subcontractors (Section V.D)
- _____ Proposal summary, technical approach narrative for Scope of Work (Section V.E)
- _____ Problem solving example (Section V.F)
- _____ Health and Safety Plan (a relevant site-specific HASP example) (Section V.G)
- _____ Documentation of licensure by the New Mexico State Board of Licensure for Professional Engineers and Surveyors in the appropriate discipline (Section V.H)
- _____ Affirmative Statement that the proposer has read and understands Section V.H of the RFP document
- _____ Anti-collusion notarized affidavit (Section V.J)
- _____ Disclosure of Campaign Contributions Form (Section V.I and Appendix D)
- _____ Cost Tables for Items in Section V.K

Appendix C

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

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

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

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

The following definitions apply:

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

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to statewide or local office. “Campaign

Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

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

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

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

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

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Name(s) of Applicable Public Official(s) if any: _____

Contribution Made By: _____

Relation to Prospective Contractor: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

--OR--

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

Signature

Date

Title (Position)

APPENDIX D

Sample Professional Services Contract

**STATE OF NEW MEXICO
New Mexico Environment Department
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 State Purchasing Agent.

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

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

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

C. Performance Measures.

Contractor shall substantially perform the following Performance Measures:

1.

2.

(or reference an Attachment 1, see below)

2. Compensation.

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

B. The Agency shall pay to the Contractor in full payment for services satisfactorily performed at the rate of _____ dollars (\$_____) per hour (OR BASED UPON DELIVERABLES, MILESTONES, BUDGET, ETC.), such compensation not to exceed (AMOUNT) (as set forth in Paragraph A) excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling (AMOUNT) shall be paid by the Agency to the Contractor. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the DFA. All invoices MUST BE received by the Agency no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

THIS IS PLANNED TO BE A MULTI-YEAR CONTRACT- 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 AND FYXX (USE FISCAL YEARS TO DESCRIBE YEAR; DO NOT USE FY1, FY2, ETC.). The New Mexico gross receipts tax levied on the amounts payable under this Agreement in FYXX totaling (AMOUNT) shall be paid by the Agency to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (AMOUNT) in FYXX.**

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

Payment in FY10, FY11, FY12 and FY13 is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the DFA. All invoices MUST BE received by the Agency no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

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

3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE DFA. This Agreement shall terminate on **DATE** unless terminated pursuant to paragraph 4, infra, or paragraph 5. In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. Termination.

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

state funds or due to the Appropriations paragraph herein. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE STATE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*"

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

5. Appropriations.

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

6. Status of Contractor.

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

7. Assignment.

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

8. Subcontracting.

The Contractor shall be allowed to subcontract or assign specified work plan tasks to project partners for any portion of the services to be performed, under this Agreement only with prior written approval of the New Mexico Environment Department.

9. Payment of Invoices

Submission and receipt of an invoice by the Department is not equivalent to acceptance of

an invoice for payment. All payments of invoices will be performance based, confirmed and verified by the Solid Waste Bureau (SWB) staff prior to submission for payment. Unverified, unapproved invoices will not be forwarded for payment. The SWB will approve invoices for payment under the following conditions: invoices are attached to a work plan progress report and are itemized and specific to the work plan tasks, invoices are submitted at a maximum of monthly and a minimum of quarterly intervals; and that the work completed has been determined to be acceptable by SWB staff either by review of deliverables or by confirmation via a field visit, as evidenced by a signature on the invoice and attached e-mail or field notes, as applicable. It is the responsibility of the Contractor to coordinate timely field visits prior to submission of an invoice to ensure timely payment of invoices by the Department.

10. 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.

11. 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.

12. 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.

13. Conflict of Interest; Governmental Conduct Act.

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

14. Amendment.

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

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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

21. 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.

22. 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.

23. 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.

24. 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: Patsy Sandoval, Project Procurement Coordinator
Radiation Control Bureau, New Mexico Environment Department
PO Box 5469, Santa Fe, NM 87502-5469
1190 St. Francis Drive, Santa Fe, NM
Office Ph #(505) 476-3063
Email to patsy.sandoval@state.nm.us

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

25. Authority.

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

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

By: _____ Date: _____
Agency

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

By: _____ Date: _____
Contractor

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

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

By: _____ Date: _____
Taxation and Revenue Department

This Agreement has been approved by the State Purchasing Agent:

By: _____ Date: _____
Michael C. Vinyard
State Purchasing Agent