STATE OF NEW MEXICO

NEW MEXICO ENVIRONMENT DEPARTMENT

REQUEST FOR PROPOSALS

RFP: 10-667-00-0003

WASTE ISOLATION PILOT PLANT (**WIPP**) POST
PERMIT ISSUANCE TECHNICAL AND REGULATORY SUPPORT

November 2, 2009
December 15, 2009 (Amendment 1)

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I. INTRODUCTION

I.A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The New Mexico Environment Department (NMED or the Agency) is requesting proposals for professional services for Resource Conservation and Recovery Act (RCRA) Subtitle C permit modification technical and regulatory support for documents submitted to the State of New Mexico for the Department of Energy's Waste Isolation Pilot Plant (WIPP). The Agency is the permitting and regulatory authority for RCRA activities at the WIPP site. The Agency prepared a permit, with contractor assistance, which became effective in November 1999 and is currently being implemented and enforced for the WIPP. The Agency will require contractor support to continue the implementation of the current permit, to assist with the process for a permit renewal application, and to receive support for modification activities to the permit.

The Agency seeks proposals from firms with expertise in regulatory and technical review and, if necessary, the development of documents supporting permit renewal and modifications for a RCRA Subtitle C permit and other technical documents. The review must compare the applicant's 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.

I.B. SUMMARY SCOPE OF WORK

The scope of work shall consist of (1) reviewing permit modification requests to the existing RCRA permit, (2) reviewing the permit renewal application, (3) reviewing other technical documents related to WIPP, (4) attending WIPP generator/storage site audits and evaluating audit reports as they relate to the permit, (5) attending public meetings, (6) providing expert testimony at public hearings, (7) evaluating other RCRA Subtitle C-related technical documents or activities (such as corrective action documents, including, but not limited to, human health and ecological risk assessments), and (8) providing, at the request of the Agency, any printed or electronic copies of reference or guidance materials and any environmental field equipment for temporary use by the Agency. The reviews must compare the contents of the Permittees' permit renewal application and permit modification requests to the permitting requirements and technical standards in the New Mexico Hazardous Waste Management Regulations, 20.4.1.900 NMAC (incorporating 40 CFR §270) and 20.4.1.500 NMAC (incorporating 40 CFR §264); other applicable RCRA requirements; and other applicable standards and guidance. Other WIPP technical documents will be reviewed for conformance with regulatory and technical requirements in Hazardous Waste Management

Regulations, requirements in the RCRA permit issued to WIPP, or other applicable state, federal, or local statutory or regulatory requirements and guidance.

I.C. SCOPE OF PROCUREMENT

The contract shall begin on July 1, 2010 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.

Proposals should include the qualifications of all personnel to be used in permit renewal and modification review and associated activities, technical document review, audit activities, and should define what the role of each person will be in satisfying the scope of work of the proposed contract.

I.D. PROCUREMENT MANAGER

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

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

All deliveries via express carrier should be addressed as follows:

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

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.

I.E. DEFINITION OF TERMINOLOGY

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

“Agency” means the New Mexico Environment Department (NMED).

“CFR” means the Code of Federal Regulations.

“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.

“Corrective Action" means an action taken in accordance with rules of the board to investigate, minimize, eliminate or clean up a release to protect the public health, safety and welfare or the environment.

“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.

“HSWA” means the Hazardous and Solid Waste Amendment of 1984 to the Resource Conservation and Recovery Act.

“HWB” means the Hazardous Waste Bureau of the Environment Department or Agency.

“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.

“NMAC” means the New Mexico Administrative Code.

“NMED” means the Environment Department of the State of New Mexico.

“Notice of Deficiency” means a request to a facility owner or operator requesting additional information before a preliminary decision on a permit application or corrective action document can be made.

“Offeror” is any person, corporation, or partnership that 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.

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

“Resource Conservation and Recovery Act” or “RCRA” was enacted in 1976 to address the management of solid and hazardous waste generated nationwide. EPA’s Office of Solid Waste (OSW) administers the RCRA program.

“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/her 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 that conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to, price, quality, quantity or delivery requirements.

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

“Waste Isolation Pilot Plant” or “WIPP” is the world's first underground repository licensed to permanently dispose of transuranic (TRU) and TRU mixed radioactive waste left from the research and production of nuclear weapons. The first shipment of TRU waste occurred in March 1999. The Agency issued a RCRA permit for the WIPP in November 1999.

"Work Plan" means a document prepared by the contractor and approved by the Agency that includes the project-specific scope of work defining the work to be performed. All work under this procurement shall be performed in accordance with approved work plans.

I.F. BACKGROUND INFORMATION

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 (USEPA) 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 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, conducts inspections, and enforces statutory and regulatory requirements related to hazardous wastes. The Department of Energy and Washington TRU Solutions LLC (Permittees) applied to the Agency for a permit to store and dispose of defense-related transuranic-mixed waste at the WIPP site. The Agency prepared and approved (November 1999) a RCRA Subtitle C permit to allow the requested activity. The permit is currently being implemented and enforced by Agency, and is undergoing the renewal process.

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 modification requests or are submitted to meet regulatory requirements of WIPP RCRA Subtitle C permit. The scope of work shall consist of the items identified in Section I.B. WIPP technical documents submitted for review could include, but would not be limited to: audit reports resulting from audits of waste characterization activities at generator/storage sites; acceptable knowledge sufficiency determination requests; sampling and analysis plans; waste characterization analytical results; hydrogeological reports; environmental monitoring (air, soil, groundwater, etc.) reports; corrective action documents; hazardous waste determinations; compliance with waste acceptance criteria; engineering designs and reports; and waste management procedures. Audit responsibilities would include participation in audits at DOE generator/storage sites around the country to observe waste characterization activities, and review of final audit report documents to determine compliance of the audited site waste characterization program with permit requirements.

I.G. PROCUREMENT LIBRARY

The Procurement Manager has established a procurement library that contains the following information:

Procurement Regulations 1.4.1 NMAC
New Mexico Hazardous Waste Act 74-4-1 through 14
New Mexico Hazardous Waste Management Regulations 20.4.1 NMAC
New Mexico Hazardous Waste Permit and Corrective Action Fee Regulations 20.4.2 NMAC
New Mexico Annual Hazardous Waste Fee Regulations 20.4.3 NMAC
40 Code of Federal Regulations Parts 270 through 279
Other documents that may be relevant to the scope of this RFP (such as various WIPP audit reports).

Offerors are encouraged to review the material contained in the Procurement Library by contacting the Procurement Manager or designee and scheduling an appointment. The Procurement Library is located at the Hazardous Waste Bureau located at 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505-6303. Offerors are welcome to take notes in the Procurement Library or to bring a portable copy machine to the library.

As a service to the potential offerors, the Procurement Manager's staff will make copies in accordance with NMED Policy and Procedure 01-06, Inspection of Public Records.

Payment in the form of a check must be made at the time of copying. Checks must be made payable to the New Mexico Environment Department. Alternately, potential offerors may check out a set of the library documents for review or reproduction for period not to exceed four (4) hours.

The following web site addresses contain links to State of New Mexico statutes and regulations, along with the Federal GSA website, that are relevant to this procurement:

http://www.newmexico.gov/
http://www.nmenv.state.nm.us/common/regs_idx.html
http://www.generalservices.state.nm.us/spd/pregulations.html
http://www.nmenv.state.nm.us/Common/records_request.htm
http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_BASIC&contentId=17943

The WIPP Hazardous Waste Facility Permit.
A copy may be downloaded from the following web site address:

http://www.nmenv.state.nm.us/wipp/pdfpermit.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.

II.A. SEQUENCE OF EVENTS

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

	Action	Responsibility	Date
1.	Issuance of RFP	Agency	11/2/09
2.	Acknowledgement of Receipt of RFP (Deadline by 5:00 p.m. MST)	Potential Offerors	11/17/09
3.	Pre-proposal Conference	Agency & Potential Offerors	11/17/09
4.	Distribution List Response	Potential Offerors	11/17/09
5.	Deadline to Submit Written Questions	Potential Offerors	12/01/09
6.	Response to Written Questions RFP Amendments	Agency	12/15/09
7.	Deadline to Submit Proposal (Must be received by Agency by 5:00 p.m. MST)	Offerors	02/19/10
8.	Proposal Evaluation	Evaluation Committee	02/22/10
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 & Finalists	Approximately 03/26/10
12.	Award Contract(s)	Agency Secretary	Approximately 04/09/10
13.	Protest Deadline	Offerors	Approximately 04/23/10

II.B. EXPLANATION OF EVENTS

The following paragraphs describe the activities listed in the sequence of events shown in Section II.A page 11.

II.B.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 6). Hard copies may also be provided to potential offerors who express interest to the Agency.

II.B.2. Acknowledgement of Receipt

Potential offerors should hand deliver or return via 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 November 17, 2009. 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.

II.B.3. Pre-Proposal Conference

A pre-proposal conference will be held on November 17, 2009 at 10:30 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.

II.B.4. Distribution List Response

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

II.B.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 December 1, 2009. 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 pages 19-20). Questions received after this date will not be addressed.

II.B.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 as hard copy located in the Procurement Manager's office (see Section I.D page 6). Responses to written questions will be available within five (5) working 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) calendar days after the answers and/or amendments were issued.

II.B.7. Deadline for Proposal Submission

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 5:00 PM MOUNTAIN STANDARD TIME ON FEBRUARY 19, 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 Procurement Manager. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the "Waste Isolation Pilot Plant Post Permit Issuance Technical and Regulatory Support" RFP. 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.

II.B.8. Proposal Evaluation

The Evaluation Committee will identify responsive offers and evaluate responsive proposals in accordance with Section V pages 29-30 of the RFP 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.

II.B.9. Selection of Finalists

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

II.B.10. Deadline for Best and Final Offers From Finalists

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

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

The Evaluation Committee will select the winning contractor(s) within approximately two (2) weeks after the submission of 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 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.

II.B.12. Award Contract(s)

After review of the Evaluation Committee Report, the recommendation of the Procurement Manager and the signed contract(s), will be awarded after approved by the Department of Finance and Administration (DFA).

The award is subject to completion of contract negotiations and appropriate State approvals. The contract may be awarded to the offeror whose proposal is most advantageous to the Agency, taking into consideration the evaluation factors set forth in the RFP. The proposal 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.

II.B.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 NMED Purchasing Agent. The protest must be delivered to the NMED Purchasing Agent at the following address:

Margaret Trujillo, NMED Purchasing Agent
Procurement Bureau - New Mexico Environment Department
1190 St. Francis Drive (87505)
P.O. Box 5469
Santa Fe, New Mexico 87502-5469

NOTE: PROTESTS RECEIVED AFTER THE DEADLINE WILL NOT BE ACCEPTED.

II.C. GENERAL REQUIREMENTS

This procurement will be conducted in accordance with the State of New Mexico's Procurement Regulations (1.4.1 NMAC).

II.C.1. Acceptance of Conditions Governing the Procurement

Submission of a proposal constitutes acceptance of the Conditions Governing the Procurement in Section II page 11 of this RFP and the Evaluation Factors contained in Section V pages 29-30 of this RFP.

II.C.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.

II.C.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.

The enclosed conflict of interest form, Appendix D pages 44-45, must be completed and signed. An indication of "NA" is not sufficient. Proposals not including a completed and signed conflict of interest form will not be considered.

II.C.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. If the offeror proposes to use subcontractors to perform part of all of the work, the proposal shall demonstrate and document the subcontractors' qualifications and compliance with conflict of interest requirements, Appendix D pages 44-45.

II.C.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. Agency personnel will not merge, collate, or assemble proposal materials.

II.C.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. To exercise this right, 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.

II.C.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.

II.C.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 Procurement Manager 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.

II.C.9. No Obligation

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

II.C.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.

II.C.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.

II.C.12. Bound by General Requirements

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.

II.C.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.

II.C.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.

II.C.15. Insurance

The contractor shall provide Workers' Compensation insurance for its employees as required by New Mexico law.

The contractor shall immediately notify The Agency upon the cancellation of any insurance policy required by this article. Such cancellation may affect the term of any contract that results from this RFP.

II.C.16. 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 B pages 33-41, "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, amendments thereto and any best and final offer 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 that offeror must propose specific alternative language. Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording. The Agency reserves the right to reject any or all of offer's proposed 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.

II.C.17. Offeror's Terms and Conditions

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

II.C.18. 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.

II.C.19. Offeror Qualifications

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

II.C.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/or doing so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

II.C.21. 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.

II.C.22. 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.

II.C.23. Agency Rights

The Agency reserves the right to accept or reject all proposals in whole or part when it is in the best interest of the State of New Mexico.

The Agency reserves the right to require approval of the offeror's quality system documentation prior to awarding the contract.

The Agency also reserves the right to contract with more than one (1) offeror. The Agency shall award the contract(s) to the offeror(s) whose proposal(s) is most advantageous, taking into consideration the evaluation factors set forth in the RFP. The most advantageous proposal(s) may or may not have received the most points.

II.C.24. Right to Publish

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

II.C.25. 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. However, any technical or user documentation submitted with the proposals of non-selected offerors shall be returned after the expiration of the protest period.

II.C.26. Electronic Mail Address Required

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

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

II.C.27. Use of Electronic Versions of this RFP

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

III. RESPONSE FORMAT AND ORGANIZATION

III.A. NUMBER OF RESPONSES

Offerors shall submit only one proposal for final consideration.

III.B. NUMBER OF COPIES

Offerors shall deliver five (5) identical copies of their proposal (Binder 1), 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 I.D page 6 on or before the closing date and time for receipt of proposals.

III.C. PROPOSAL FORMAT

All proposals must be typewritten on standard 8 1/2 x 11 paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within binders with tabs delineating each section. Electronic versions of proposals will be considered nonresponsive and rejected on that basis.

III.C.1. Proposal Organization

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

a) Letter of Transmittal (Binder 1)
b) Table of Contents (Binder 1)
c) Proposal Summary (optional) (Binder 1)
d) Response to Mandatory Specifications (Binder 1)
e) Completed Cost Response Form (Binder 2)
f) Response to Agency Terms and Conditions (Binder 2)
g) Offeror's Additional Terms and Conditions (Binder 2)
h) 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 Cost Response Form and Fee Schedule. Any proposal that does not adhere to these requirements may be deemed nonresponsive and rejected on that basis.

III.C.2. Letter of Transmittal

Each proposal must be accompanied by a letter of transmittal that must:

a) identify the submitting organization;
b) identify the name and title of the person authorized by the organization to contractually obligate the organization;
c) identify the name, title and telephone number of the person authorized to negotiate the contract on behalf of the organization;
d) identify the names, titles and telephone numbers of persons to be contacted for clarification;
e) explicitly indicate acceptance of the Conditions Governing the Procurement stated in Section II.C.1 page 15;
f) be signed by the person authorized to contractually obligate the organization; and
g) acknowledge receipt of any and all amendments to this RFP.

III.C.3. Table of Contents

The table of contents should be all items listed in Section III.C.1 page 21 and must include page numbers.

III.C.4. Proposal Summary

The offeror may include a proposal summary to provide the Evaluation Committee with an overview of the technical and business features of the proposal. However, this material will not be used in the evaluation process unless specifically referenced from other portions of the offeror's proposal.

III.C.5. Response to Mandatory Specifications

Any proposal that does not adequately address these requirements may be deemed nonresponsive and rejected on that basis. A copy of the Time and Materials Fee Schedule with costs blanked out shall be included in this section of the proposal.

III.C.6. Cost Response

The offeror’s cost calculations submitted on the completed Cost Response Form shall be in a separate binder from the technical portion of the proposal. A copy of the offeror’s Time and Materials Fee Schedule showing costs shall also be included in the cost portion of the proposal.

III.C.7. Offeror’s Terms and Conditions

If an offeror wishes to respond to any of the terms or conditions (see Sections II.C.16 to II.C.18 page 18) or wishes to list additional terms and conditions, please do so in this section of the proposal, which shall be included in cost proposal binder.

III.C.8. Financial History

Offerors must 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.

III.C.9. Other Supporting Material

Offerors may attach other materials that they feel may improve the quality of their responses. This material shall be included in a separate binder from the rest of the proposal and only one copy of this material needs to be submitted.

IV. SPECIFICATIONS

At a minimum, offeror's proposals should demonstrate their understanding of the scope of work and address each mandatory specification listed below.

Offerors should respond in the form of a thorough narrative to each mandatory specification. The narratives along with required supporting materials will be evaluated and awarded points accordingly. As previously stated in Section I page 5, the scope of work shall consist of (1) reviewing permit modification requests for the WIPP RCRA permit, (2) reviewing the permit renewal application, (3) reviewing other technical documents related to WIPP, (4) attending WIPP generator/storage site audits and evaluating audit reports as they relate to the permit, (5) attending public meetings, (6) providing expert testimony at public hearings, (7) evaluating other RCRA-related technical documents or activities (such as corrective action documents, including, but not limited to, human health and ecological risk assessments), and (8) providing, at the request of the Agency, any printed or electronic copies of reference or guidance materials and any environmental field equipment for temporary use by the Agency. The reviews must compare the contents of the Permittees' renewal application and permit modification requests to the permitting requirements and technical standards in the New Mexico Hazardous Waste Management Regulations, 20.4.1.900 NMAC (incorporating 40 CFR §270) and 20.4.1.500 NMAC (incorporating 40 CFR §264); other applicable RCRA requirements; and other applicable standards and guidance. Other WIPP technical documents will be reviewed for conformance with regulatory and technical requirements in Hazardous Waste Management Regulations, requirements in the RCRA permit issued to WIPP, or other applicable state, federal, or local statutory or regulatory requirements and guidance. WIPP technical documents submitted for review could include, but would not be limited to: audit reports resulting from audits of waste characterization activities at generator/storage sites; acceptable knowledge sufficiency determination requests; sampling and analysis plans; waste characterization analytical results; hydrogeological reports; environmental monitoring (air, soil, groundwater, etc.) reports; corrective action documents; hazardous waste determinations; compliance with waste acceptance criteria; engineering designs and reports; and waste management procedures. Audit responsibilities would include participation in audits at DOE generator/storage sites around the country to observe waste characterization activities, and review of final audit report documents to determine compliance of the audited site waste characterization program with permit requirements.

IV.A. INFORMATION

IV.A.1. Agency Resources

The Agency will provide the use of conference rooms as needed to meet with contractor personnel and Agency technical, regulatory and policy representatives. Upon adequate notification to the Agency, the following resources will be provided to contractor personnel for use on this contract:

Minimal clerical support and use of desk, telephone, computer workstation, printers and minimal access will be available to copiers and fax machines.

IV.A.2. Work Location and Facilities

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

IV.A.3. Level of Effort and Deliverables

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 the first 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.

IV.A.4. Time Frame

The contract is scheduled to begin on or about July 1, 2010. The contract deliverables will be determined by the Agency.

IV.B. MANDATORY SPECIFICATIONS

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

IV.B.1. 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), including any experience associated with the WIPP draft or final permit, 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) Engineering;
c) Geology;
d) Hydrology;
e) Transuranic (TRU) mixed waste;
f) Waste characterization;
g) General audit procedures; and
h) Contamination assessments and remediation (including risk assessments).

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

IV.B.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 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.

IV.B.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 WIPP permit 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.

IV.B.4. Staff References

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

a) Name 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.

IV.B.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 plans should include checklist(s) for administrative completeness and any other pertinent information demonstrating a logical progression towards project completion. Separate sample project work plans should be submitted for each of the following:

a) permit modification request, including class determination;
b) technical document review; and
c) site audit.

IV.B.6. Cost

Offerors must propose one fixed, fully-loaded hourly rate per service category on the Cost Response Form in Appendix C pages 42-43. The cost responses shall be based on the offeror's attached fee schedules. The fixed cost shall include all fringe benefits and overhead, as well as subcontractor personnel, if appropriate. New Mexico gross receipts taxes, travel, and per diem are excluded from the proposed maximum hourly rates. They shall be shown separately on the invoice. However, at no time shall employee per diem rates be more than the allowable amounts posted by the U.S. General Services Administration for each relevant fiscal year.

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 (see Section III.C pages 21-23).

The service categories are as follows:
a. Technical
b. Regulatory
c. Clerical

V. EVALUATION

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

V.A. EVALUATION POINT TABLE/SUMMARY

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

	FACTOR	POINTS AVAILABLE
1.	Corporate Experience	100
2.	Corporate References	50
3.	Staff Experience	300
4.	Staff References	100
5.	Sample Project Work Plans	200
6.	Cost	250
	TOTAL	1000

V.B. EVALUATION FACTORS

The Evaluation Committee will award points to each proposal using the following evaluation factors based on the Mandatory Specifications in RFP Section IV.B page 25.

V.B.1. Corporate Experience

The corporate experience of the offeror including all subcontractors will be evaluated based upon documented experience on similar projects and engagements as per Section IV.B.1 page 25.

V.B.2. 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 as per Section IV.B.2 page 26.

V.B.3. 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 as per Section IV.B.3 page 26.

V.B.4. 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 as per Section IV.B.4 page 27.

V.B.5. Sample Project Work Plans

Points will be awarded for this evaluation factor based upon the quality and thoroughness of the project plan as per Section IV.B.5 page 27.

V.B.6. Cost

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

$$\frac{\text{Lowest Responsive Offer Average Hourly Rate}}{\text{This offeror's Average Hourly Rate}} \times 250 = \text{Award Points}$$

V.C. EVALUATION PROCESS

The evaluation process will follow the steps listed below:

1. All offeror proposals will be reviewed for compliance with the mandatory requirements stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.

2. The Procurement Manager may contact the offeror for clarification of the response as specified in Section II.B.7 page 13.

3. The Evaluation Committee may use other sources of information to perform the evaluation as specified in Section II.C.19 page 18.

4. Responsive proposals will be evaluated on the factors in Section V pages 29-30 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. Finalist offerors who are asked or choose to submit revised proposals for the purpose of obtaining best and final offers will have their points recalculated accordingly.

5. The responsible offeror(s) whose proposal is most advantageous to the Agency, taking into consideration the evaluation factors in Section V pages 29-30, will be recommended for contract award as specified in Section II.B.11 page 14. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

APPENDIX A

ACKNOWLEDGEMENT OF RECEIPT FORM

REQUESTS FOR PROPOSALS

Waste Isolation Pilot Plant Post (**WIPP**) Permit Issuance Technical and Regulatory Support

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 D.

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than close of business on November 17, 2009. 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.: _____ 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.

Cathy Herrera
Hazardous Waste Bureau - New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303
Phone: (505) 476-6019
Fax: (505) 476-6030

APPENDIX B

CONTRACT TERMS AND CONDITIONS

SAMPLE

STATE OF NEW MEXICO

NAME OF AGENCY
PROFESSIONAL SERVICES CONTRACT **#_____**

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

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

A. The Contractor shall perform the following work:

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

C. *Performance Measures.*
Contractor shall substantially perform the following Performance Measures:

1.

2.

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

(or reference an Attachment 1, see below)

2. Compensation.

A. The Agency shall pay to the Contractor in full payment for services satisfactorily performed at the rate of _____ dollars ($_____) per hour (OR BASED UPON DELIVERABLES, MILESTONES, BUDGET, ETC.), such compensation not to exceed (AMOUNT), excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling (AMOUNT) shall be paid by the Agency to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (AMOUNT). This amount is a maximum and not a guarantee that the work assigned to Contractor to be performed 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. <u>Term</u>.

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. <u>Termination.</u>

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the Agency's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the Agency is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the Agency or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE STATE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*"

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

5. Appropriations.

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

6. Status of Contractor.

The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business

income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. Assignment.

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

8. Subcontracting.

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

9. Release.

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

10. Confidentiality.

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

11. Product of Service -- Copyright.

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

12. Conflict of Interest; Governmental Conduct Act.

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

13. Amendment.

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

14. Merger.

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and

understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15. Penalties for violation of law.

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

16. Equal Opportunity Compliance.

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

17. Applicable Law.

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

18. Workers Compensation.

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

19. Records and Financial Audit.

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

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to:

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

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

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

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

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

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

Contractor reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of $250,000, $500,000 or $1,000,000, depending on the dollar value threshold in effect at that time.

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: [insert name, address and email].

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 DFA Contracts Review Bureau:

By: _____ Date:_____
DFA Contracts Review Bureau

APPENDIX C

COST RESPONSE FORM

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:_____

APPENDIX D

CONFLICT OF INTEREST FORM

CONFLICT OF INTEREST
PERSONS OR RETAINER ON CONTRACT

The offeror (including subsidiaries and affiliates) shall disclose the number and type of all contracts with the Department of Energy.

The Offeror shall provide the names of current subcontractors. Of current subcontractors identify those who hold current contracts with the Department of Energy.

The offeror shall list its contracts and its subcontaractors' contracts with the Federal Government for the past 10 years listed by agency including the date of the contract, contract amount, and a brief scope of work performed.

_____
Last Name First Name Middle Initial

_____
Title

_____
Company/Firm Name

Company Address:

Address:_____

P.O. Box/Drawer: _____

City: _____ State: _____ Zip Code+4: _____-_____

_____ _____
Signature

APPENDIX E

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

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

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

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

The following definitions apply:

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

"**Campaign Contribution**" means a gift, subscription, loan, advance or deposit of money

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

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

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

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

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

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

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Date Contribution(s) Made: _____
_____

Amount(s) of Contribution(s) _____
_____

Nature of Contribution(s) _____
_____

Purpose of Contribution(s) _____

_____

(Attach extra pages if necessary)

_____ _____

Signature Date

_____

Title (position)

--OR—

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

_____ _____

Signature Date

_____

Title (Position)