STATE PURCHASING DIVISION
OF THE
GENERAL SERVICES DEPARTMENT
AND
NEW MEXICO ENVIRONMENT DEPARTMENT

REQUEST FOR PROPOSALS (RFP)

HEARING OFFICER

RFP# 21 667 1210 0005

RFP Release Date: May 10, 2021

Proposal Due Date: June 21, 2021
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I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The purpose of the Request for Proposals (RFP) is to solicit sealed proposals to establish a contract(s) through competitive negotiations for the procurement of a hearing officer for a wide range of matters docketed in the Office of Public Facilitation under Title 20 of the N.M. Administrative Code. The hearing officer is appointed by the Secretary of Environment or his designees, or by various Boards and Commissions such as the Water Quality Control Commission (WQCC) and the Environmental Improvement Board (EIB), and conducts a wide range of prehearing, hearing and post-hearing functions.

The award will be a one (1) year (FY22) contract with the option to extend for the three (3) successive one (1) year terms for a total not to exceed four (4) years under the same terms and conditions as stated in the original contract.

B. BACKGROUND INFORMATION

The controlling statutes and regulations of the New Mexico Environment Department (NMED) afford the opportunity for public hearings in relation to rulemakings, enforcement and permitting actions, and appeals. Relevant procedural rules provide for the appointment of a Hearing Officer to preside over prehearing conferences and motion practice, control scheduling and receive technical evidence, conduct public hearings in an efficient and orderly manner, draft reports and make recommended decisions to the Secretary of Environment as to the appropriate course of action to be taken. The hearings at issue can be short (a few hours) or long (multi-week) depending on the subject matter, and parties appearing before the Hearing Officer in such Hearings at times appear pro se. Hearings are held both through a virtual platform and throughout the state and may require travel. NMED has a departmental Hearing Officer, and this procurement is to provide additional hearing officer support to NMED due to possible conflict of interest issues that may arise, and the large number of hearings held by the Department. Hearings will be assigned by NMED on an as-needed basis. At times, the Hearing Officer will be accompanied by the Office of Public Facilitation staff member to an assigned hearing. Additionally, various Boards and Commissions (for example, WQCC and EIB) may request that the Hearing Officer contracted through this procurement act as Hearing Officer in proceedings before those bodies. Such hearings would include enforcement actions, appeals of Department decisions, and rulemakings pursuant to the procedural rules found in Title 20 of the N.M. Administrative Code.

C. SCOPE OF PROCUREMENT

1. Conduct hearings in various locations (includes virtual platforms), establish hearing dates, issue subpoenas, conduct pre-hearing conferences, accept testimony and written filings, administer oaths and affirmations, rule on motions and objections (both prior to and during the hearing) to assure an impartial hearing, and explain issues and applicable laws to parties involved.
2. Ensure that hearings are held in a timely manner and are conducted fairly and in accordance with all applicable procedural rules, statutes and guidelines.
3. Assure all parties’ due process rights are observed and the public is offered a reasonable opportunity to be heard, when applicable.
4. Consider evidence, argument and research and prepare timely Hearing Office Reports and recommended decisions for proposed final orders.
5. Advise the Secretary or designees or Board or Commission as to evidence presented; it may also be necessary to advise the Secretary on legal issues surrounding specific proceedings, as well.
6. Prior to hearings, coordinate with Office of Public Facilitation and/or NMED staff to comply with proper notice requirements, and arrange the forum, translation facilities and verbal transcription service.
7. During proceedings, the Hearing Officer will be expected to be capable of managing multiple participants, including the public. The Hearing Officer will also be expected to properly manage technical and/or expert testimony, translators and court reporters, and public participation.
8. Work with NMED Boards and Commissions’ Administrator and staff to ensure proper administration of hearings, filings and other proceedings.
9. Timely manage multiple caseloads.
10. Provide scripts and other procedural assistance for Secretary or designees or Board/Commission members designated as Hearing Officers.

D. PROCUREMENT MANAGER

NMED has assigned a Procurement Manager who is responsible for the conduct of this procurement whose name, address, telephone number and e-mail address are listed below:

Name: Jessica Tapia, Procurement Manager
Address: 1190 South St. Francis Dr. Ste S4050
          Santa Fe, NM 87502
Telephone: (505) 795-0783
Email: jessica.tapia@state.nm.us

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

2. Protests of the solicitation or award must be submitted in writing to the Protest Manager identified in Section II.B.10. As a Protest Manager has been named in this Request for Proposals, pursuant to §13-1-172, NMSA 1978 and 1.4.1.82 NMAC, ONLY protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute,
rule and this Request for Proposals. Protests submitted or delivered to the Procurement Manager will **NOT** be considered properly submitted.

**E. PROPOSAL DELIVERY**

All deliveries of proposals via express carrier, courier or hand delivery, must be addressed and submitted as follows:

- **Name:** Jessica Tapia, Procurement Manager
- **RFP Name:** Hearing Officer, 21 667 1210 0005
- **Address:** New Mexico Environment Department  
  1190 South St. Francis Dr. Ste S4050  
  Santa Fe, NM 87502  
  [Jessica.tapia@state.nm.us](mailto:Jessica.tapia@state.nm.us)

**F. DEFINITION OF TERMINOLOGY**

This section contains definitions of terms used throughout this procurement document, including appropriate abbreviations:

1. “**Agency**” means the State Purchasing Division of the General Services Department or that State Agency sponsoring this Procurement.

2. “**Authorized Purchaser**” means an individual authorized by a Participating Entity to place orders against this contract.

3. “**Award**” means the final execution of the contract document.

4. “**Business Hours**” means 8:00 AM thru 5:00 PM MST/MDT, whichever is in effect on the date given.

5. “**Close of Business**” means 5:00 PM Mountain Standard or Daylight Time, whichever is in use at that time.

6. “**Confidential**” means confidential financial information concerning Offeror’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act §§57-3-A-1 through 57-3A-7, NMSA 1978,. See also NMAC 1.4.1.45. The following items may **not** be labelled as confidential: Offeror’s submitted Cost response, Staff/Personnel Resumes/Bios (excluding personal information such as personal telephone numbers and/or home addresses), and other submitted data that is **not** confidential financial information or that qualifies under the Uniform Trade Secrets Act.

7. “**Contract**” means any agreement for the procurement of items of tangible personal property, services or construction.
8. “Contractor” means any business having a contract with a state agency or local public body.

9. “Determination” means the written documentation of a decision of a procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

10. “Desirable” – the terms “may,” “can,” “should,” “preferably,” or “prefers” identify a desirable or discretionary item or factor.

11. “Electronic Version/Copy” means a digital form consisting of text, images or both readable on computers or other electronic devices that includes all content that the Original and Hard Copy proposals contain. The digital form may be submitted using a compact disc (CD) or USB flash drive. The electronic version/copy can NOT be emailed.

12. “Evaluation Committee” means a body appointed to perform the evaluation of Offerors’ proposals.

13. “Evaluation Committee Report” means a report prepared by the Procurement Manager and the Evaluation Committee to support the Committee’s recommendation for contract award. It will contain scores and written evaluations of all responsive Offeror proposals.

14. “Final Award” means, in the context of this Request for Proposals and all its attendant documents, that point at which the final required signature on the contract(s) resulting from the procurement has been affixed to the contract(s) thus making it fully executed.

15. Hearing Clerk” means an NMED employee who processes filings associated with hearings and coordinates the scheduling and location of hearings, conferences and other meetings related to hearings.

16. “Hourly Rate” means the proposed fully loaded maximum hourly rates that include travel, per diem, fringe benefits and any overhead costs for contractor personnel, as well as subcontractor personnel if appropriate.

17. “Juris Doctor” means a professional graduate degree in law.

18. “Mandatory” – the terms ”must,” ”shall,” ”will,” ”is required,” or ”are required,” identify a mandatory item or factor. Failure to meet a mandatory item or factor may result in the rejection of the Offeror’s proposal.

19. “Minor Technical Irregularities” means anything in the proposal that does not affect the price, quality and/or quantity, or any other mandatory requirement.

20. “Multiple Source Award” means an award of an indefinite quantity contract for one or more similar services, items of tangible personal property or construction to more than one Offeror.
21. “NMED” means the New Mexico Environment Department.

22. “Offeror” is any person, corporation, or partnership who chooses to submit a proposal.

23. “Procurement Manager” means any person or designee authorized by a state agency or local public body to enter into or administer contracts and make written determinations with respect thereto.

24. “Procuring Agency” means all State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law to entertain procurements.

25. “Project” means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved and project acceptance is given by the project executive sponsor.

26. “Redacted” means a version/copy of the Offeror’s proposal with the information considered proprietary or confidential (as defined by §§57-3A-1 to 57-3A-7, NMSA 1978 and NMAC 1.4.1.45 and summarized herein and outlined in Section II.C.8 of this RFP) blacked-out BUT NOT omitted or removed.

27. “Request for Proposals (RFP)” means all documents, including those attached or incorporated by reference, used for soliciting proposals.

28. “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.

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

30. “Sealed” means, in terms of a non-electronic submission, that the proposal is enclosed in a package which is completely fastened in such a way that nothing can be added or removed. Open packages submitted will not be accepted except for packages that may have been damaged by the delivery service itself. The State reserves the right, however, to accept or reject packages where there may have been damage done by the delivery service itself. Whether a package has been damaged by the delivery service or left unfastened and should or should not be accepted is a determination to be made by the Procurement Manager. By submitting a proposal, the Offeror agrees to and concurs with this process and accepts the determination of the Procurement Manager in such cases.

31. “Secretary” means the Secretary of the New Mexico Environment Department.
32. “Staff” means any individual who is a full-time, part-time, or an independently contracted employee with the Offerors’ company.

33. “State (the State)” means the State of New Mexico.

34. “State Agency” means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of this state. “State agency” includes the Purchasing Division of the General Services Department and the State Purchasing Agent but does not include local public bodies.

35. “State Purchasing Agent” means the Director of the Purchasing Division of the General Services Department.

36. “Statement of Concurrence” means an affirmative statement from the Offeror to the required specification agreeing to comply and concur with the stated requirement(s). This statement shall be included in Offeror’s proposal. (E.g. “We concur,” “Understands and Complies,” “Comply,” “Will Comply if Applicable,” etc.)

37. “Subpoenas” means Legal documents issued in an adjudicatory proceeding that requires the attendance of a witness to provide testimony at a legal proceeding such as a hearing.

38. “Unredacted” means a version/copy of the proposal containing all complete information; including any that the Offeror would otherwise consider confidential, such copy for use only for the purposes of evaluation.

39. “Written” means typewritten on standard 8 ½ x 11 inch paper. Larger paper is permissible for charts, spreadsheets, etc.

G. PROCUREMENT LIBRARY
A procurement library has been established. Offerors are encouraged to review the material contained in the Procurement Library by selecting the link provided in the electronic version of this document through your own internet connection or by contacting the Procurement Manager and scheduling an appointment. The library contains information listed below:

Procurement Regulations and Request for Proposal – RFP instructions:
https://www.env.nm.gov/requests-for-proposals/
II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule of events, the descriptions of each event, and the conditions governing this procurement.

A. SEQUENCE OF EVENTS

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

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<thead>
<tr>
<th>Action</th>
<th>Responsible Party</th>
<th>Due Dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Issue RFP</td>
<td>Agency</td>
<td>May 10, 2021</td>
</tr>
<tr>
<td>2. Acknowledgement of Receipt Form</td>
<td>Potential Offerors</td>
<td>May 24, 2021</td>
</tr>
<tr>
<td>3. Deadline to submit Written Questions</td>
<td>Potential Offerors</td>
<td>May 24, 2021</td>
</tr>
<tr>
<td>4. Response to Written Questions</td>
<td>Procurement Manager</td>
<td>May 28, 2021</td>
</tr>
<tr>
<td>5. Submission of Proposal</td>
<td>Potential Offerors</td>
<td>June 07, 2021</td>
</tr>
<tr>
<td>6. Proposal Evaluation</td>
<td>Evaluation Committee</td>
<td>June 08, 2021</td>
</tr>
<tr>
<td>7. Selection of Finalists</td>
<td>Evaluation Committee</td>
<td>June 14, 2021</td>
</tr>
<tr>
<td>8. Finalize Contractual Agreements</td>
<td>Agency/Finalist Offerors</td>
<td>June 18, 2021</td>
</tr>
<tr>
<td>10. Protest Deadline</td>
<td>Agency</td>
<td>+15 days</td>
</tr>
</tbody>
</table>

*Dates indicated in Events 5 through 10 are estimates only, and may be subject to change without necessitating an amendment to the RFP.

B. EXPLANATION OF EVENTS

The following paragraphs describe the activities listed in the Sequence of Events shown in Section II.A., above.

1. Issue RFP

This RFP is being issued on behalf of the New Mexico Environment Department on May 07, 2021.
2. Acknowledgement of Receipt Form

Potential Offerors should hand deliver, return by facsimile or registered or certified mail or email to the Procurement Manager the "Acknowledgement of Receipt of Request for Proposals Form" that accompanies this document, APPENDIX A, to have their organization placed on the procurement distribution list. The form should be signed by an authorized representative of the organization, dated and returned to the Procurement Manager by 3:00 pm MST on May 21, 2021.

The procurement distribution list will be used for the distribution of written responses to questions. Failure to return the Acknowledgement of Receipt form shall constitute a presumption of receipt and rejection of the RFP, and the potential Offeror’s organization name shall not appear on the distribution list.

3. Deadline to Submit Written Questions

Potential Offerors may submit written questions to the Procurement Manager as to the intent or clarity of this RFP until May 24, 2021 MST as indicated in the sequence of events. All written questions must be addressed to the Procurement Manager as declared in Section I, Paragraph D. Questions shall be clearly labeled and shall cite the Section(s) in the RFP or other document which form the basis of the question.

4. Response to Written Questions

Written responses to written questions will be distributed as indicated in the sequence of events to all potential Offerors whose organization name appears on the procurement distribution list. An e-mail copy will be sent to all Offeror’s that provide Acknowledgement of Receipt Forms described in II.B.2 before the deadline. Additional copies will be posted to: https://www.env.nm.gov/requests-for-proposals/

5. Submission of Proposal

ALL PROPOSALS MUST BE RECEIVED BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 3:00 PM MST ON June 21, 2021. NO LATE PROPOSAL CAN BE ACCEPTED. For hard copy proposals, the date and time of receipt will be recorded on each proposal. If an Offeror decides to use a third-party delivery entity to submit its proposal, it is still the responsibility of the Offeror to ensure that the delivery is made on time. An Offeror should take into account all factors regarding the delivery by the third-party entity and ensure that the delivery is made prior to the stated deadline. Weather delays, traffic jams, deliveries to the incorrect address nor any other reason for a delay will be accepted for failure to make the stated deadline.
Proposals must be addressed and delivered to the Procurement Manager at the address identified in Section I.E. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the Hearing Officer RFP 21 667 1210 0005. Proposals submitted by facsimile, or other electronic means will not be accepted.

A log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to §13-1-116, NMSA 1978, the contents of proposals shall not be disclosed to competing potential Offerors during the negotiation process. The negotiation process is deemed to be in effect until the contract is awarded pursuant to this Request for Proposals. Awarded in this context means the final required state agency signature on the contract(s) resulting from the procurement has been obtained.

6. Proposal Evaluation

An Evaluation Committee will perform the evaluation of proposals. This process will take place as indicated in the sequence of events, depending upon the number of proposals received. 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. However, proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors.

7. Selection of Finalists

The Evaluation Committee will select, and the Procurement Manager will notify the finalist Offerors as per schedule Section II. A., Sequence of Events or as soon as possible. Finalists will be comprised of Offerors receiving the highest cumulative scores in the following Sections: Section IV.B.1 Organizational Experience, Section IV.B.2 Organizational References, and Section IV.B.3 Mandatory Specifications.

8. Finalize Contractual Agreements

Any Contractual agreement(s) resulting from this RFP will be finalized with the most advantageous Offeror(s) as per schedule Section II. A., Sequence of Events or as soon thereafter as possible. This date is subject to change at the discretion of the State Agency Procurement office. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror in the time specified, the State reserves the right to finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process.

9. Contract Awards

After review of the Evaluation Committee Report and the signed contractual agreement, the Agency Procurement office will award as per the schedule in Section II. A., Sequence of Events or as soon as possible thereafter. This date is subject to change at the discretion of the State Agency Procurement office.
The contract shall be awarded to the Offeror (or Offerors) whose proposals are most advantageous to the State of New Mexico and NMED taking into consideration the evaluation factors set forth in this RFP. The most advantageous proposal may or may not have received the most points. The award is subject to appropriate Department and State approval.
10. Protest Deadline

Any protest by an Offeror must be timely submitted and in conformance with §13-1-172, NMSA 1978 and applicable procurement regulations. As a Protest Manager has been named in this Request for Proposals, pursuant to §13-1-172, NMSA 1978 and 1.4.1.82 NMAC, ONLY protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. The 15-calendar day protest period shall begin on the day following the notice of award of contract(s) and will end at 5:00 pm MST/MDT on the 15th day. Protests must be written and must include the name and address of the protestor and the request for proposal number. It must also contain a statement of the grounds for protest including appropriate supporting exhibits and it must specify the ruling requested from the party listed below. The protest must be delivered to:

Joseph Lovato, Protest Manager
New Mexico Environment Department
1190 South St. Francis Dr. Ste S-4050
Santa Fe, NM 87502
505-795-2258
josephm.lovato@state.nm.us

PROTESTS RECEIVED AFTER THE DEADLINE WILL NOT BE ACCEPTED.

C. GENERAL REQUIREMENTS

1. Acceptance of Conditions Governing the Procurement

Potential Offerors must indicate their acceptance of these Conditions Governing the Procurement, Section II.C, by completing and signing the Letter of Transmittal form, pursuant to the requirements in Section II.C.30, located in APPENDIX E.

2. Incurring Cost

Any cost incurred by the potential 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 contractual agreement that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of all requirements of the contractual agreement with a State Agency which may derive from this RFP. The State Agency
entering into a contractual agreement with a vendor will make payments to only the prime contractor.

4. Subcontractors/Consent

The use of subcontractors is not allowed. The prime contractor shall be wholly responsible for the entire performance of the contractual agreement whether or not subcontractors are used. Additionally, the prime contractor must receive approval, in writing, from the agency awarding any resultant contract, before any subcontractor is used during the term of this agreement.

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.

6. Offeror’s 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 addressed to the Procurement Manager and signed by the Offeror’s duly authorized representative.

The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations, 1.4.1.5 & 1.4.1.36 NMAC.

7. Proposal Offer Firm

Responses to this RFP, including proposal prices for services, will be considered firm for one-hundred twenty (120) days after the due date for receipt of proposals or ninety (180) days after the due date for the receipt of a best and final offer, if the Offeror is invited or required to submit one.

8. Disclosure of Proposal Contents

The contents of all submitted proposals will be kept confidential until the final award has been completed by the Agency. At that time, all proposals and documents pertaining to the proposals will be available for public inspection, except for proprietary or confidential material as follows:

a. Proprietary and Confidential information is restricted to:
   1. confidential financial information concerning the Offeror’s organization; and
   2. information that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, §§57-3A-1 through 57-3A-7, NMSA 1978.
b. An additional but separate redacted version of Offeror’s proposal, as outlined and identified in Sections III.B.1.a.i, shall be submitted containing the blacked-out proprietary or confidential information, in order to facilitate eventual public inspection of the non-confidential version of Offeror’s proposal.

**IMPORTANT:** 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 proprietary or confidential materials, the Agency shall examine the 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 proprietary or confidential information.

9. **No Obligation**

This RFP in no manner obligates the State of New Mexico or any of its Agencies to the use of any Offeror’s services until a valid written contract is awarded and approved by appropriate authorities.

10. **Termination**

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

11. **Sufficient Appropriation**

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

12. **Legal Review**

The Agency requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror’s concerns must be promptly submitted in writing to the attention of the Procurement Manager.
13. Governing Law

This RFP and any agreement with an Offeror which may result from this procurement shall be governed by the laws of the State of New Mexico.

14. Basis for Proposal

Only information supplied in writing by the Procurement Manager or contained in this RFP shall be used as the basis for the preparation of Offeror proposals.

15. Contract Terms and Conditions

The contract between an agency and a contractor will follow the format specified by the Agency and contain the terms and conditions set forth in the Draft Contract Appendix C. However, the contracting agency reserves the right to negotiate provisions in addition to those contained in this RFP (Draft Contract) with any Offeror. The contents of this RFP, as revised and/or supplemented, and the successful Offeror’s proposal will be incorporated into and become part of any resultant contract.

The Agency discourages exceptions from the contract terms and conditions as set forth in the RFP Draft Contract. Such exceptions may cause a proposal to be rejected as nonresponsive when, in the sole judgment of the Agency (and its evaluation team), the proposal appears to be conditioned on the exception, or correction of what is deemed to be a deficiency, or an unacceptable exception is proposed which would require a substantial proposal rewrite to correct.

Should an Offeror object to any of the terms and conditions as set forth in the RFP Draft Contract (APPENDIX C) strongly enough to propose alternate terms and conditions in spite of the above, the Offeror must propose specific alternative language. The Agency may or may not accept the alternative language. General references to the Offeror’s terms and conditions or attempts at complete substitutions of the Draft Contract are not acceptable to the Agency and will result in disqualification of the Offeror’s proposal.

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

If an Offeror fails to propose any alternate terms and conditions during the procurement process (the RFP process prior to selection as successful Offeror), no proposed alternate terms and conditions will be considered later during the negotiation process. Failure to propose alternate terms and conditions during the procurement process (the RFP process prior to selection as successful Offeror) is an explicit agreement by the Offeror that the contractual terms and conditions contained herein are accepted by the Offeror.
16. 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. See Section II.C.15 for requirements.

17. Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation (such terms and conditions having been proposed during the procurement process, that is, the RFP process prior to selection as successful Offeror), will be discussed only between the Agency and the Offeror selected and shall not be deemed an opportunity to amend the Offeror’s proposal.

18. Offeror Qualifications

The Evaluation Committee may make such investigations as necessary to determine the ability of the potential Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any potential Offeror who is not a Responsible Offeror or fails to submit a Responsive Offer as defined in §13-1-83 and §13-1-85, NMSA 1978.

19. Right to Waive Minor Irregularities

The Evaluation Committee reserves the right to waive minor irregularities, as defined in Section I.F.20. 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.

20. Change in Contractor Representatives

The Agency reserves the right to require a change in contractor representatives if the assigned representative(s) is (are) not, in the opinion of the Agency, adequately meeting the needs of the Agency.

21. Notice of Penalties

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

22. Agency Rights
The Agency in agreement with the Evaluation Committee reserves the right to accept all or a portion of a potential Offeror’s proposal.

23. Right to Publish

Throughout the duration of this procurement process and contract term, 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 and/or agency contracts deriving from this procurement. Failure to adhere to this requirement may result in disqualification of the Offeror’s proposal or removal from the contract.

24. Ownership of Proposals

All documents submitted in response to the RFP shall become property of the State of New Mexico. If the RFP is cancelled, all responses received shall be destroyed by the Agency or SPD unless the Offeror either picks up, or arranges for pick-up, the materials within three (3) business days of notification of the cancellation. Offeror is responsible for all costs involved in return mailing/shipping of proposals.

25. Confidentiality

Any confidential information provided to, or developed by, the contractor in the performance of the contract resulting from this RFP 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.

The Contractor(s) agrees to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without the procuring Agency's written permission.

26. Electronic mail address required

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail address to receive this correspondence. (See also Section II.B.5, Response to Written Questions).

27. Use of Electronic Versions of this RFP

This RFP is being made available by electronic means. In the event of conflict between a version of the RFP in the Offeror’s possession and the version maintained by the agency, the Offeror acknowledges that the version maintained by the agency shall govern. Please refer to: https://www.env.nm.gov/requests-for-proposals/
28. New Mexico Employees Health Coverage

A. If the Offeror 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, Offeror must agree to have in place, and agree to
maintain for the term of the contract, health insurance for those employees if the
expected annual value in the aggregate of any and all contracts between Contractor and
the State exceed $250,000 dollars.

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

C. Offeror must agree 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 https://bewellnm.com.

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); these requirements shall apply the first day of the second month
after the Offeror reports combined sales (from state and, if applicable, from local public
bodies if from a state price agreement) of $250,000.

29. Campaign Contribution Disclosure Form

Offeror must complete, sign, and return the Campaign Contribution Disclosure Form,
APPENDIX B, as a part of their proposal. This requirement applies regardless whether a
covered contribution was made or not made for the positions of Governor and Lieutenant
Governor or other identified official. Failure to complete and return the signed,
unaltered form will result in Offeror’s disqualification.

30. Letter of Transmittal

Offeror’s proposal must be accompanied by an unaltered Letter of Transmittal Form
(APPENDIX E), which must be completed and signed by the individual authorized to
contractually obligate the company, identified in #2 below. DO NOT LEAVE ANY OF
THE ITEMS ON THE FORM BLANK (N/A, None, Does not apply, etc. are acceptable
responses).

The Letter of Transmittal MUST:

1. Identify the submitting business entity (its Name, Mailing Address and Phone
Number);
2. Identify the Name, Title, Telephone, and E-mail address of the person authorized by the Offeror’s organization to (A) contractually obligate the business entity providing the Offer, (B) negotiate a contract on behalf of the organization; and/or (C) provide clarifications or answer questions regarding the Offeror’s proposal content. (*A response to B and/or C is only required if the responses differ from the individual identified in A*);

3. Identify sub-contractors, if any, anticipated to be utilized in the performance of any resultant contract award;

4. Describe any relationship with any other entity (such as State Agency, reseller, etc., that is not a sub-contractor identified in #3), if any, which will be used in the performance of this awarded contract; and

5. Be signed and dated by the person identified in #2 above; attesting to the veracity of the information provided, and acknowledging (a) the organization’s acceptance of the Conditions Governing the Procurement stated in Section II.C.1, (b) the organizations acceptance of the Section V Evaluation Factors, and (c) receipt of any and all amendments to the RFP.

**Failure to respond to ALL items as indicated above, will result in Offeror’s disqualification.**

31. Disclosure Regarding Responsibility

A. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars ($60,000.00) with any state agency or local public body for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor’s company:

1. is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body;

2. has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:
   a. the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract;
   b. violation of Federal or state antitrust statutes related to the submission of offers; or
   c. the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property;

3. is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure;

4. has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds $3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.
a. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

b. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

c. Have within a three-year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body.)

B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.

C. The Contractor shall provide immediate written notice to the State Purchasing Agent or other party to this Agreement if, at any time during the term of this Agreement, the Contractor learns that the Contractor’s disclosure was at any time erroneous or became erroneous by reason of changed circumstances.

D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor’s responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will render the Offeror nonresponsive.

E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.

F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the State Purchasing Agent or other party to this Agreement. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the State Purchasing Agent or Central Purchasing Officer may terminate the involved contract for cause. Still further the State Purchasing Agent or Central Purchasing Officer may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the State Purchasing Agent or Central Purchasing Officer.
32. New Mexico Preferences

To ensure adequate consideration and application of §13-1-21, NMSA 1978 (as amended), Offerors must include a copy of their preference certificate with their proposal. Certificates for preferences must be obtained through the New Mexico Department of Taxation & Revenue [http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx](http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx).

A. **New Mexico Business Preference**
   A copy of the certification must accompany Offeror’s proposal.

B. **New Mexico Resident Veterans Business Preference**
   A copy of the certification must accompany Offeror’s proposal.

An agency shall not award a business both a resident business preference and a resident veteran business preference.

The New Mexico Preferences shall not apply if the expenditures for this RFP includes federal funds.
III. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

Offerors shall submit only one proposal in response to this RFP.

B. NUMBER OF COPIES

1. Hard Copy Responses

Offeror’s proposals must be clearly labeled and numbered and indexed as outlined in Section III.C. Proposal Format. Proposals must be submitted in the manner outlined below, and sealed according to the definition provided in Section I.F.30. Each ORIGINAL binder (Technical and Cost) shall be clearly marked as “ORIGINAL” on the front of the binder. The additional HARD COPIES (if any) must each be submitted in separate binders, and must be clearly identified as “COPY” on the front cover.

Technical and Cost portions of Offerors proposal must be submitted in separate binders as indicated below in this section, and must be prominently identified as “Technical Binder,” or “Cost Binder,” on each front cover. Envelopes, packages or boxes containing the original and the copies must be clearly labeled and submitted in a sealed envelope, package or box according to the information provided in Section I.E. It is not necessary to segregate Technical Binders from Cost Binders, if they are submitted within the same sealed envelope, package or box, as long as the Technical Binders and Cost Binders are each submitted in separate binders.

Offerors must deliver:

a) Technical Proposals – One (1) ORIGINAL and one (1) ELECTRONIC copy of the proposal containing ONLY the Technical Proposal; The electronic copy MUST be submitted as a USB/CD and CANNOT be emailed. The Technical Proposals SHALL NOT contain any cost information.

i. Confidential Information: If Offeror’s proposal contains confidential information, as defined in Section I.F.6 and detailed in Section II.C.8, Offeror must submit:

   • all of the requisite proposals identified in Section III.B.1.a above as unredacted (def. Section I.F.38) versions for evaluation purposes; AND
   • ONE (1) additional redacted (def. Section I.F.26) HARD COPY version and ONE (1) additional redacted electronic version for the public file, in order to facilitate eventual public inspection of the non-confidential version of Offeror’s proposal. Redacted versions must be clearly marked as “REDACTED” or “CONFIDENTIAL” on the front cover of the hard-copy binder and on the first page of the electronic file.;
b) **Cost Proposals** – One (1) ORIGINAL and one (1) ELECTRONIC copy of the proposal containing **ONLY** the Cost Proposal; **The electronic copy MUST be submitted as a USB/CD and CANNOT be emailed.**

The electronic version/copy of the proposal **must** mirror the physical binders submitted (i.e. One (1) **unredacted CD/USB**, one (1) **redacted CD/USB**). **The electronic version can NOT be emailed.**

The ORIGINAL, HARD COPY and ELECTRONIC copy information **must** be identical. In the event of a conflict between versions of the submitted proposal, the ORIGINAL shall govern.

Any proposal that does not adhere to the requirements of this Section and **Section III.C.1 Proposal Content and Organization**, may be deemed non-responsive and rejected on that basis.

**C. PROPOSAL FORMAT**

All proposals must be submitted as follows:

Hard copies must be typewritten on standard 8 ½ x 11-inch paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within binders with tabs delineating each section.

**Organization of folders/envelopes for hard copy proposals:**

1. **Proposal Content and Organization**

   Direct reference to pre-prepared or promotional material may be used if referenced and clearly marked. Promotional material should be minimal. The proposal must be organized and indexed in the following format and must contain, at a minimum, all listed items in the sequence indicated.

   **Technical Proposal** (Binder 1): **DO NOT INCLUDE ANY COST INFORMATION IN THE TECHNICAL PROPOSAL.**
   
   A. Signed Letter of Transmittal (APPENDIX E)  
   B. Table of Contents  
   C. Response to Contract Terms and Conditions (from Section II.C.15)  
   D. Offeror’s Additional Terms and Conditions (from Section II.C.16)  
   E. Response to Specifications (except cost information which shall be included in  
      Cost Proposal/Binder 2 only)  
      1. Organizational Experience  
      2. Organizational References  
      3. Mandatory Specification  
      4. Signed Campaign Contribution Form  
      5. New Mexico Preferences (If applicable)  
   F. Other Supporting Material (If applicable)
Cost Proposal (Binder 2):

1. Completed Cost Response Form (APPENDIX D)

Within each section of the proposal, Offerors should address the items in the order indicated above. All forms provided in this 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 on the cost response form.

The proposal summary may be included by potential Offerors to provide the Evaluation Committee with an overview 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. **DO NOT INCLUDE COST INFORMATION IN THE PROPOSAL SUMMARY.**
IV. SPECIFICATIONS
Offerors should respond in the form of a thorough narrative to each specification, unless otherwise instructed. The narratives, including required supporting materials, will be evaluated and awarded points accordingly.

A. DETAILED SCOPE OF WORK
1. Conduct hearings, establish hearing dates, issue subpoenas, conduct pre-hearing conferences, accept testimony and written filings, administer oaths and affirmations, rule on motions and objections (both prior to and during the hearing) to assure an impartial hearing, and explain issues and applicable laws to parties involved.
2. Ensure that hearings are held in a timely manner and are conducted fairly and in accordance with all applicable procedural rules, statutes and guidelines.
3. Assure all parties due process rights are observed and the public is offered a reasonable opportunity to be heard, when applicable.
4. Consider evidence, argument and research and prepare timely Hearing Officer Reports.
5. Advise the Secretary or designees or Board or Commission as to evidence presented; it may also be necessary to advise the Secretary on legal issues surrounding specific proceedings, as well.
6. Prepare records upon appeal.
7. During proceedings, the Hearing Officer will be expected to be capable of managing multiple participants, including the public. The Hearing Officer will also be expected to properly manage technical and/or expert testimony and public participation.
8. Work with Boards and Commissions Administrator and the Hearing Clerk to ensure proper administration of hearings, filings and other proceedings.
9. Manage large caseloads within timelines.
10. Provide scripts, orders and other procedural assistance for the Secretary or designees or Board or Commission members designated as Hearing Officers.

B. TECHNICAL SPECIFICATIONS

1. Organizational Experience
Offeror must:
   a) Provide a description of relevant experience with state government and private sector. The experience of any proposed subcontractors must be described. The narrative must thoroughly describe how the Offeror has supplied expertise for similar contracts and must include the extent of their experience, expertise and knowledge as a provider of
services in accordance with the proposed scope of work. All prior experience provided to private sector clients will also be considered and should be provided;

b) Indicate how many administrative or judicial hearings the Offeror has participated in as a party’s counsel or presided over as a decision-maker in the last five (5) years, including the general subject matter of the hearing, and what agency or court the hearing was before;

c) Describe at least two successes and two failures the Offeror has had while presiding over administrative or judicial hearings. Describe how each experience improved the Offeror’s services.

2. Organizational References

Offerors should provide a minimum of three (3) references from similar projects performed for judicial, state or federal agency, or large local government clients within the last ten years. **Offerors are required to submit APPENDIX F, Organization Reference Questionnaire, to the business references they list. The business references must submit the Reference Form directly to the designee described in Sec I Paragraph D.** It is the Offeror’s responsibility to ensure the completed forms are received on or before **June 07, 2021 by 3:00 pm MST** for inclusion in the evaluation process.

Organizational References that are not received or are not complete, may adversely affect the vendor’s score in the evaluation process. The Evaluation Committee may contact any or all business references for validation of information submitted. If this step is taken, the Procurement Manager and the Evaluation Committee must all be together on a conference call with the submitted reference so that the Procurement Manager and all members of the Evaluation Committee receive the same information. Additionally, the Agency reserves the right to consider any and all information available to it (outside of the Business Reference information required herein), in its evaluation of Offeror responsibility per Section II, Para C.18.

Offerors shall submit the following Business Reference information as part of the Offer:

a) Client name;
b) Case or proceeding description;
c) Proceeding dates (starting and ending);
d) Staff assigned to the reference case or proceeding that will be designated for work per this RFP; and
e) Client contact name, telephone number, fax number and e-mail address.

3. Mandatory Specifications

The Offeror shall include information describing the extent to which the Offeror possesses the following mandatory specifications:
a. J.D. from an accredited law school;
b. Licensed (active) to practice law in New Mexico;
c. Certificate of good standing in every jurisdiction in which they are admitted to practice law;
d. Demonstrates expertise in the following legal areas:
   (a) Administrative Law;
   (b) Environmental Law;
   (c) Public Health Law;
   (d) Natural Resources Law;
   (e) Hearing Procedures (Judicial or Administrative);
   (f) Rules of Evidence; and
   (g) Rules of Civil Procedure.

C. BUSINESS SPECIFICATIONS

1. Letter of Transmittal Form

   The Offeror’s proposal must be accompanied by the Letter of Transmittal Form located in APPENDIX E. The form must be completed and must be signed by the person authorized to obligate the company. Failure to respond to ALL items, as indicated in Section II.C.30 and APPENDIX E, and to return a signed, unaltered form will result in Offeror’s disqualification.

2. Campaign Contribution Disclosure Form

   The Offeror must complete an unaltered Campaign Contribution Disclosure Form and submit a signed copy with the Offeror’s proposal. This must be accomplished whether or not an applicable contribution has been made. (See APPENDIX B). Failure to complete and return the signed, unaltered form will result in Offeror’s disqualification. (See APPENDIX B)

3. Cost

   Offerors must complete the Cost Response Form in APPENDIX D. Cost will be measured by the formula shown in Section B.B.8. All charges listed on APPENDIX D must be justified and evidence of need documented in the proposal.

4. Resident Business or Resident Veterans Preference

   To ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended), Offerors MUST include a copy, in this section, of its NM Resident preference certificate, as issued by the New Mexico Taxation and Revenue Department.
V. EVALUATION

A. EVALUATION POINT SUMMARY

The following is a summary of evaluation factors with point values assigned to each. These weighted factors will be used in the evaluation of individual potential Offeror proposals by sub-category.

<table>
<thead>
<tr>
<th>Evaluation Factors</th>
<th>Points Available</th>
</tr>
</thead>
<tbody>
<tr>
<td>B. Technical Specifications</td>
<td>Points must be assigned and defined for all factors (must total 100% of available points)</td>
</tr>
<tr>
<td>B. 1. Organizational Experience</td>
<td>500</td>
</tr>
<tr>
<td>B. 2. Organizational References</td>
<td>100</td>
</tr>
<tr>
<td>B. 3. Mandatory Specifications</td>
<td>400</td>
</tr>
<tr>
<td>C. Business Specifications</td>
<td></td>
</tr>
<tr>
<td>C.1. Letter of Transmittal</td>
<td>Pass/Fail</td>
</tr>
<tr>
<td>C.2. Signed Campaign Contribution Disclosure From</td>
<td>Pass/Fail</td>
</tr>
<tr>
<td>C.3. Cost</td>
<td>Pass/Fail</td>
</tr>
<tr>
<td>TOTAL POINTS AVAILABLE</td>
<td>1,000 points</td>
</tr>
<tr>
<td>C.4. New Mexico Preference - Resident Vendor Points per Section IV C.4</td>
<td>Percentage change pursuant to V.B.7. C.4. A.</td>
</tr>
<tr>
<td>C.4. New Mexico Preference - Resident Veterans Points per Section IV C.4</td>
<td>Percentage change pursuant to V.B.7. C.4. B.</td>
</tr>
</tbody>
</table>

Table 1: Evaluation Point Summary

B. EVALUATION FACTORS

1. B.1 Organizational Experience (See Table 1)
Points will be awarded based on the thoroughness and clarity of the response of the engagements cited and the perceived validity of the response. Agencies must include evaluation criteria based on Section IV. B.1.
2. **B.2 Organizational References (See Table 1)**

Points will be awarded based upon an evaluation of the responses to a series of questions as per Appendix F. Points will be awarded for each individual response up to 1/3 of the total points for this category. Lack of a response will be awarded zero (0) points. Agencies must include evaluation criteria based on Section IV. B.2.

3. **B.3 Mandatory Specifications**

Agencies must include evaluation criteria based on Section IV. B.3.

4. **C.1 Letter of Transmittal (See Table 1)**

   Pass/Fail only. No points assigned.

5. **C.2 Campaign Contribution Disclosure Form (See Table 1)**

   Pass/Fail only. No points assigned.

6. **C.3 Cost (See Table 1)**

The evaluation of each Offeror’s cost proposal will be conducted using the following formula:

\[
\frac{\text{Lowest Responsive Offer Bid}}{\text{This Offeror’s Bid}} \times \text{Available Award Points}
\]

7. **C.4. New Mexico Preferences**

   Percentages will be determined based upon the point-based system outlined in NMSA 1978, § 13-1-21 (as amended).

   A. **New Mexico Business Preference**

      If the Offeror has provided a copy of their Preference Certificate the Preference Points for a New Mexico Business is 5%.

   B. **New Mexico Resident Veterans Business Preference**

      If the Offeror has provided a copy of their Preference Certificate the Preference Point is 10%.

C. **EVALUATION PROCESS**

   1. All Offeror proposals will be reviewed for compliance with the requirements and specifications 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.

3. Responsive proposals will be evaluated on the factors in Section IV, which have been assigned a point value in Section V. The responsible Offerors with the highest scores will be selected as finalist Offerors, based upon the proposals submitted. In accordance with 13-1-117 NMSA 1978, the responsible Offerors whose proposals are most advantageous to the State taking into consideration the Evaluation Factors in Section V will be recommended for award (as specified in Section II.B.9). 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
APPENDIX A

REQUEST FOR PROPOSAL

Hearing Officer
RFP 21 667 1210 0005
ACKNOWLEDGEMENT OF RECEIPT FORM

This Acknowledgement of Receipt Form should be signed and submitted no later than 3:00 pm MST on May 24, 2021. Only potential Offerors who elect to return this form will receive copies of all submitted questions and the written responses to those questions, as well as any RFP amendments, if any are issued.

In acknowledgement of receipt of this Request for Proposal, the undersigned agrees that he or she has received a complete copy of the RFP, beginning with the title page, and ending with APPENDIX F.

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

ORGANIZATION: ______________________________________________________________

CONTACT NAME: ______________________________________________________________

TITLE: ________________________________ PHONE NO.: ____________________

E-MAIL:  __________________________________________

ADDRESS: _____________________________________________________________

CITY: __________________________ STATE: ________ ZIP CODE: _____________

Submit Acknowledgement of Receipt Form to:
Jessica Tapia, Procurement Manager
Hearing Officer RFP 21 667 1210 0005
State Purchasing Division
1190 South St. Francis Dr. Ste.S4050
Santa Fe, NM  87502
E-mail: Jessica.tapia@state.nm.us
APPENDIX B
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, a prospective contractor subject to this section shall disclose all campaign contributions given by the prospective contractor or a family member or representative of the prospective contractor to an applicable public official of the state or a local public body during the two years prior to the date on which a proposal is submitted or, in the case of a sole source or small purchase contract, the two years prior to the date on which the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor or a family member or representative of the prospective contractor to the public official exceeds two hundred fifty dollars ($250) over the two-year period. A prospective contractor submitting a disclosure statement pursuant to this section who has not contributed to an applicable public official, whose family members have not contributed to an applicable public official or whose representatives have not contributed to an applicable public official shall make a statement that no contribution was made.

A prospective contractor or a family member or representative of the prospective contractor shall not give 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 during the pendency of negotiations for a sole source or small purchase contract.

Furthermore, a solicitation or proposed award for a proposed contract may be canceled 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 if a prospective contractor fails to submit a fully completed disclosure statement pursuant to this section; or a prospective contractor or family member or 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.

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 a 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 [Sections 13-1-28 through 13-1-199 NMSA 1978] or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or 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)
THIS AGREEMENT is made and entered into by and between the State of New Mexico, NEW MEXICO ENVIRONMENT DEPARTMENT, hereinafter referred to as the “Agency,” and AWARDED VENDOR NAME, hereinafter referred to as the “Contractor,” and is effective as of the date set forth below upon which it is executed by the Department of Finance and Administration (DFA).

IT IS AGREED BETWEEN THE PARTIES:

1. **Scope of Work.**
   The Contractor shall perform the following work:

   Work with the Secretary and Deputy Secretary of the Agency, the Agency Hearing Clerk, and the Boards and Commissions Administrator for the Agency to coordinate and schedule hearings as the need arises. When scheduling the hearing, the contractor will work with the aforementioned Agency contacts to determine the approximate number of hours that will be required for the Hearing Officer to execute his or her duties related to the proceedings. The Contractor shall perform the following work under this Agreement:

   1. Conduct hearings in various locations (sometimes virtual), establish hearing dates, issue subpoenas, conduct pre-hearing conferences, accept testimony and written filings, administer oaths and affirmations, rule on motions and objections (both prior to and during the hearing) to assure an impartial hearing, and explain issues and applicable laws to parties involved.
   2. Ensure that hearings are held in a timely manner and are conducted fairly and in accordance with all applicable procedural rules, statues and guidelines.
   3. Assure all parties due process rights are observed and the public is offered a reasonable opportunity to be heard, when applicable.
   4. Consider evidence, argument and research and prepare timely Hearing Office Reports and recommended decisions for proposed final orders.
   5. Advise the Secretary or designees or Board or Commission as to evidence presented; it may also be necessary to advise the Secretary on legal issues surrounding specific proceedings, as well.
   6. Prior to hearings, coordinate with paralegals to comply with proper notice requirements, and arrange the forum, translation facilities and verbal transcription service.
   7. During proceedings, the Hearing Officer will be expected to be capable of managing multiple participants, including the public. The Hearing Officer will also be expected to properly manage technical and/or expert testimony and public participation.
   8. Work with Boards and Commissions Administrator and the Hearing Clerk to ensure proper administration of hearings, filings and other proceedings.
   9. Timely manage large caseloads.
10. Provide scripts and other procedural assistance for Secretary or designees or Board/Commission members designated as Hearing Officers.

2. **Compensation.**
   A. The Agency shall pay to the Contractor in full payment for services satisfactorily performed at the rate of TBD (TBD) per hour for each term, such compensation not to exceed TBD (TBD), including gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement 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 TBD (TBD).** This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the Agency when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

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

   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 **FOUR (4) YEARS from the date of approval by the DFA** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with NMSA 1978, § 13-1-150, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in NMSA 1978, § 13-1-150.

4. **Termination.**
   A. **Grounds.** The Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Agency’s uncured, material breach
of this Agreement.

B. Notice; Agency Opportunity to Cure.

1. Except as otherwise provided in Paragraph (4)(B)(3), the Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Agency’s material breaches of this Agreement upon which the termination is based and (ii) state what the Agency must do to cure such material breaches. Contractor’s notice of termination shall only be effective (i) if the Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Paragraph 5, “Appropriations”, of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Agency’s sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor’s receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party’s liability for pre-termination defaults 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. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE AGENCY’S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR’S DEFAULT/BREACH OF THIS AGREEMENT.

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

5. Appropriations.

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

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

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

8. **Subcontracting.**
   The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Agency. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Procuring Agency.

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

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

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

12. **Conflict of Interest; Governmental Conduct Act.**
    A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.
B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

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

2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;

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

4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator’s family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

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

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

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

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

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

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

   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, NMSA 1978 §§ 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 illegal bribes, gratuities and kickbacks.

   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 NMSA 1978, § 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.
18. **Workers Compensation.**

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

19. **Records and Financial Audit.**

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

20. **Indemnification.**

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

21. **New Mexico Employees Health Coverage.**

   A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed $250,000 dollars.

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

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

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

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

23. **Invalid Term or Condition.**

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

24. **Enforcement of Agreement.**

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

25. **Notices.**

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

To the Agency:
Office of Public Facilitation (OPF)
Attn: Gregory Chakalian
NM Environment Department
P.O. Box 5469
1190 St. Francis Drive Ste N4050
Santa Fe NM 87502
gregory.chakalian@state.nm.us

To the Contractor:
TBD

26. **Authority.**
If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the DFA Contracts Review Bureau below.

By: ___________________________   Date: ____________

James C. Kenney, Cabinet Secretary
New Mexico Environment Department

By: ___________________________   Date: ____________

Marlene Velasquez, Chief Financial Officer,
New Mexico Environment Department

Approved for legal sufficiency:

By: ___________________________   Date: ____________

Christopher Atencio, Assistant General Counsel
New Mexico Environment Department

Contractor:

By: ___________________________   Date: ____________
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:

CRS ID Number:

By: ___________________ Date: ____________

Taxation & Revenue Department

This Agreement has been approved by the Department of Finance and Administration, Contracts Review Bureau:

By: ___________________ Date: ____________

Department of Finance and Administration, Contracts Review Bureau
**APPENDIX D**

**COST RESPONSE FORM**

>This is a sample form only. Agency must tailor this Cost form to meet its individual program/agency requirements, AND create corresponding Evaluation Factor(s) in Section V. Be detailed in describing what required Cost is to include (e.g. direct costs, indirect costs, travel, materials, labor, etc.). (Ensure statutory requirements of NMSA 1978, § 13-1-150 regarding Multi Term Contracts limits are complied with when establishing Pricing/Term periods or extension pricing)

<table>
<thead>
<tr>
<th>Description</th>
<th>Type</th>
<th>Quantity</th>
<th>Cost per Item</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hourly Rate for all work described in the scope of work of Request for Proposal</td>
<td>Hourly</td>
<td>Each</td>
<td></td>
</tr>
<tr>
<td>Hourly Rate for travel to and from all locations outside of office</td>
<td>Hourly</td>
<td>Each</td>
<td></td>
</tr>
<tr>
<td>Travel expenses to include (Per Diem, Lodging and Mileage)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Any other rates or expenses</td>
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</table>

All amounts provided must include all labor, materials, equipment, transportation, configuration, installation, training and profit to provide the goods and/or services described in Section IV.A, (as amended by any current RFP amendments for the period specified).
APPENDIX E

LETTER OF TRANSMITTAL FORM
### APPENDIX E

#### Letter of Transmittal Form

ITEMS #1 to #4 EACH MUST BE COMPLETED IN FULL (pursuant to Section II.C.30). FAILURE TO RESPOND TO ALL FOUR (4) ITEMS WILL RESULT IN THE DISQUALIFICATION OF OFFEROR’S PROPOSAL! DO NOT LEAVE ANY ITEM BLANK! (N/A, None, Does not apply, etc. are acceptable responses.)

RFP#: 21 667 1210 0005

1. Identify the following information for the submitting organization:

<table>
<thead>
<tr>
<th>Offeror Name</th>
<th></th>
</tr>
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<tbody>
<tr>
<td>Mailing Address</td>
<td></td>
</tr>
<tr>
<td>Telephone</td>
<td></td>
</tr>
<tr>
<td>FED ID#</td>
<td></td>
</tr>
<tr>
<td>NM CRS#</td>
<td></td>
</tr>
</tbody>
</table>

2. Identify the individual(s) authorized by the organization to (A) contractually obligate, (B) negotiate, and/or (C) clarify/respond to queries on behalf of this Offeror:

<table>
<thead>
<tr>
<th>A Contractually Obligate</th>
<th>B Negotiate*</th>
<th>C Clarify/Respond to Queries*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td>Title</td>
<td>E-mail</td>
</tr>
<tr>
<td>Telephone</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* If the individual identified in Column A also performs the functions identified in Columns B & C, then no response is required for those Columns. If separate individuals perform the functions in Columns B and/or C, they must be identified.

3. Use of subcontractors (Select one):
   - No subcontractors will be used in the performance of any resultant contract, OR
   - The following subcontractors will be used in the performance of any resultant contract:

   (Attach extra sheets, as needed)

4. Describe any relationship with any entity (such as a State Agency, reseller, etc. that is not a subcontractors listed in #3 above), if any, which will be used in the performance of any resultant contract. (N/A, None, Does not apply, etc. are acceptable responses to this item.)

   (Attach extra sheets, as needed)

By signing the form below, the Authorized Signatory attests to the accuracy and veracity of the information provided on this form, and explicitly acknowledges the following:

- On behalf of the submitting-organization identified in item #1, above, I accept the Conditions Governing the Procurement, as required in Section II.C.1. of this RFP;
- I concur that submission of our proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP; and
- I acknowledge receipt of any and all amendments to this RFP, if any.

________________________________________________ _____________________, 20______
Authorized Signature and Date (Must be signed by the individual identified in item #2.A, above.)
APPENDIX F

ORGANIZATIONAL REFERENCE QUESTIONNAIRE

The State of New Mexico, as a part of the RFP process, requires Offerors to submit a minimum of three (3) business references as required within this document. The purpose of these references is to document Offeror’s experience relevant to the scope of work in an effort to establish Offeror’s responsibility.

Offeror is required to send the following reference form to each business reference listed. The business reference, in turn, is requested to submit the Reference Form directly to: Joseph Lovato, 1190 South St Francis Drive Suite S4050, Santa Fe NM 87502. Phone 505-795-0783. jessica.tapia@state.nm.us by June 07, 2021 for inclusion in the evaluation process. The form and information provided will become a part of the submitted proposal. Business references provided may be contacted for validation of content provided therein.
This form is being submitted to your company for completion as a business reference for the company listed above. This form is to be returned to the State of New Mexico, Environment Department via e-mail at:

Name: Jessica Tapia, Procurement Manager  
Address: 1190 South St Francis Drive  
          Suite S4050  
          Santa Fe, NM 87502  
Telephone: 505-795-0783  
Email: jessica.tapia@state.nm.us

no later than **June 07, 2021 3:00 pm MST and must not** be returned to the company requesting the reference.

For questions or concerns regarding this form, please contact the State of New Mexico Procurement Manager listed above. When contacting the Procurement Manager, include the Request for Proposal number provided at the top of this page.

<table>
<thead>
<tr>
<th>Organization providing reference</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Contact name and title/position</td>
<td></td>
</tr>
<tr>
<td>Contact telephone number(s)</td>
<td></td>
</tr>
<tr>
<td>Contact e-mail address</td>
<td></td>
</tr>
<tr>
<td>Case or proceeding description</td>
<td></td>
</tr>
<tr>
<td>Proceeding dates (start and end dates)</td>
<td></td>
</tr>
</tbody>
</table>
QUESTIONS:

1. In what capacity have you worked with this vendor in the past?
   COMMENTS:

2. How would you rate this firm's knowledge and expertise?
   ____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
   COMMENTS:

3. How would you rate the vendor's flexibility relative to changes in the project scope and timelines?
   ____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
   COMMENTS:

4. What is your level of satisfaction with hard-copy materials produced by the vendor?
   ____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable, N/A = Not applicable)
   COMMENTS:

5. How would you rate the dynamics/interaction between vendor personnel and your staff?
6. Who are/were the vendor’s principal representatives involved in your case or proceeding and how would you rate them individually? Would you, please, comment on the skills, knowledge, behaviors or other factors on which you based the rating?

   _____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

   Name: ____________________________________________ Rating:
   Name: ____________________________________________ Rating:
   Name: ____________________________________________ Rating:
   Name: ____________________________________________ Rating:

   COMMENTS:

7. How satisfied are/were you with the case or proceeding management by the vendor?

   _____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable, N/A = Not applicable)

   COMMENTS:

8. With which aspect(s) of this vendor's services are/were you most satisfied?

   COMMENTS:
9. With which aspect(s) of this vendor's services are/were you least satisfied?

COMMENTS:

10. Would you recommend this vendor's services to your organization again?

COMMENTS: