

Northern New Mexico College



REQUEST FOR PROPOSALS

RFP: #2022-001

Legal Services

Issue Date: Thursday, September 30, 2021

Due Date: 4:00 p.m. MST, October 28, 2021

Office of Finance and Administration
931 Paseo de Oate
Española, NM 87532

CONTACT: Cheryl James, CPO
505.747.2162
cheryl.james@nnmc.edu

I. INTRODUCTION

A. Purpose of this Request for Proposals

To secure Legal Services for Northern New Mexico College (Northern) as needed, upon request, including representation in select matters. The resulting contract will be for one (1) year and may be extended for an additional three (3) years not to exceed a total of four (4) total years.

This is a Request for Proposals (RFP), not a bid process. While financial considerations are a factor, they will not be the sole determinant for this award. Northern reserves the right to award multiple contracts under this RFP if it is in the best interest of the college.

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Northern Point of Contact: Cheryl James, CPO
 Email: cheryl.james@nnmc.edu
 Phone: (505) 747-2162

NIGP Codes:

- 91874: Legal Consulting
- 96149: Legal Services, Attorneys

Proposals **must be emailed** in PDF format to the Procurement Manager by 4:00pm MST/DST October 28, 2021. Email submissions must clearly indicate that they are in response to the Legal Services RFP: #2022-001.

Background Information

Northern is a state-funded institution of higher education, managed by a five-member Board of Regents appointed by the Governor of the State of New Mexico. Northern was founded in 1909 by the New Mexico Territorial legislature with an original mission to teach English to Spanish-speaking teachers in the area. Historically, Northern has been a community/technical college, but in 2005, the college began offering four-year degree programs. Currently, Northern is an accredited, two-year and four-year degree granting institution of higher learning and offers degrees in biology, business administration, elementary education, engineering, environmental science, information technology, and nursing. The college primarily serves rural communities within a 40-mile radius of its main campus in Espanola, New Mexico; it also has a branch location in El Rito, NM that is about 30 miles north of its main campus. Northern's mission is to provide accessible, affordable, community-based learning opportunities that meet the educational, employment, and enrichment needs of our culturally diverse region.

B. Scope of Work

Proposer must be capable of delivering Services in at least the following areas of law:

- A.) General Litigation;

- B.) Education Policies and Procedures;
 - C.) Employment Law, including Public Employee Law;
 - D.) Procurement Law; E.) Civil Rights;
 - F.) Governing Board Representation;
 - G.) Student Financial Aid;
 - H.) Real Estate, capable of handling all aspects of real estate transactions for governmental entities;
 - I.) Business Law, including corporate, commercial, contract (including construction contracting), tax (particularly issues involving tax-exempt entities), insurance;
 - J.) Administrative Law, including public agency work, procurement and issues related to higher education;
 - K.) Collective Bargaining/Labor Union (public employees); and
 - L.) Government Grant and Contract Law.
- M.) Firm is to provide a Single Point of Contact throughout the term of the agreement. The single point of contact will be the representative that we will initially contact to discuss our legal needs and determine who is best suited to assist us.

Offeror proposals should address all listed in the Scope of Work .

II. Submission Requirements

Offerors shall submit only one (1) proposal. The proposal shall be formatted for standard 8 1/2 x 11 paper size, in 12-point type font with page numbers, and organized in the following format:

- Transmittal Letter;
- Table of Contents;
- Summary of proposed services;
- Response to Mandatory Specifications;
- Cost Proposal – Hourly Rate Sheet by professional service level
- Supporting material and/or documentation; and
- The Campaign Contribution Disclosure Form.
- Any applicable preferences.

Proposals should not exceed 20 pages in length and must be emailed in PDF format to the Procurement Manager by the specified time/date. Email submissions must clearly indicate that they are in response to the RFP 2022-001 Legal Services.

Please see Section III Specifications for details regarding mandatory specifications.

Procurement Manager

Offerors may contact **ONLY** the Procurement Manager regarding this procurement. Other Northern staff and faculty **do not** have the authority to respond on behalf of Northern with regard to this procurement. Please address all questions and RFP responses to:

Cheryl James, CPO – Procurement Manager
 Northern New Mexico College
 921 N. Paseo de Onate
 Espanola, New Mexico 87532
 Office Telephone Number: 505.747.2162
 Email: cheryl.james@nnmc.edu

Procurement Library

The Procurement Manager has established a Procurement Library. All documents listed in the Procurement Library are hereby incorporated into this RFP by reference. Offerors are encouraged to review the material contained in the Procurement Library by accessing the documents from the Northern’s website at <https://nnmc.edu/home/facultystaff-gateway/business-services/information-on-current-rfp-s/>. Other than Offeror-reproduced copies, materials cannot be removed from the library.

The library contains information listed below:

- RFP and associated Appendixes
- Response to written Offeror questions
- Other relevant documents

I. CONDITIONS GOVERNING THE PROCUREMENT

A. RFP Conditions

Northern reserves the right to accept proposals, in whole or in part that most closely meet the criteria described herein. Northern also reserves the right to cancel this RFP in whole or in part at any time if it is in its best interests. An award will not be based solely on the lowest fee; instead, it will be based on several weighted criteria, as provided herein that will be used to determine the most advantageous offer. The successful Offeror will enter into a service contract with Northern. A sample of the contract is included as Appendix D.

B. Sequence of Events

| <u>Action</u> | <u>Responsible Party</u> | <u>Target Date</u> |
|---|--------------------------|--|
| 1. Issuance of RFP | Northern | September 30, 2021 (Thursday) |
| 2. Last Day to Submit Written Questions | Potential Offerors | 5:00 p.m., October 13, 2021 (Wednesday) |
| 3. Response to Written Questions | Procurement Manager | October 15, 2021 (Friday) |
| 4. Deadline for Submission of Proposals | Potential Offerors | 4:00 p.m. MDT, October 28, 2021 (Thursday) |
| 5. Proposal Evaluation | Evaluation Committee | Anticipated: November 1-3, 2021 (Monday-Wednesday) |
| 6. Selection of Finalist(s) | Evaluation Committee | Anticipated: November 4, 2021 |

| | | |
|--|-------------|---|
| 7. Presentations/Demonstrations (if requested) | Finalist(s) | Anticipated: November 11, 2021 (Thursday) |
| 8. Best and Final Offer (if requested) | Finalist(s) | Anticipated: November 12, 2021(Friday) |
| 9. Anticipated Contract Award | Northern | Anticipated: November 19, 2021 (Friday) |
| 10. Protest Deadline (anticipated) | Offerors | Anticipated: December 4, 2021 (Saturday) |

C. Explanation of Events

The following paragraphs describe the activities listed in the sequence of events shown in Section II. D.

- a. Issuance of RFP: This RFP is being issued on behalf of the Northern on Thursday, September 30, 2021.
- b. Deadline to Submit Written Questions: Offerors may submit written questions to the Procurement Manager to clarify information presented in this RFP until 5:00 p.m. MST/DST Wednesday, October 13, 2021 as indicated in the sequence of events.
- c. Response to Written Questions: The Procurement Manager will distribute responses to written questions publicly by close of business on Friday, October 15, 2021 via Northern's webpage at <https://nmmc.edu/home/facultystaff-gateway/business-services/information-on-current-rfp-s/>.
- d. Submission of Proposal: All Offeror proposals must be received for review and evaluation by the Procurement Manager or designee, **no later than 4:00 p.m. MST/DST on Thursday, October 28, 2021**. Proposals received after this deadline will not be accepted or considered. Pursuant to Section 13-1-116 NMSA 1978, the contents of proposals shall not be disclosed to competing potential Offerors prior to contract award. Proposals may be sent by email in PDF format to the Procurement Manager listed above. The negotiation process is deemed to be in effect until the contract is awarded pursuant to this Request for Proposals.
- e. Proposal Evaluation: An Evaluation Committee will evaluate proposals per the Sequence of Events above. The Evaluation Committee will be appointed by Northern management. During this time, the Procurement Manager may initiate discussions with Offerors for the purpose of clarifying aspects of the proposals if deemed necessary. Discussions shall not be initiated by the Offerors. The most advantageous proposal may or may not have received the most points.
- f. Selection of Finalists: The Procurement Manager will notify finalists and provide a schedule for the presentations/demonstration per the Sequence of Events above.
- g. Presentations/Demonstrations: If required by the Evaluation Committee, Finalists Offerors will be asked to make an oral presentation/demonstration of their products/services. The Procurement Manager will schedule the time for each Offeror's demonstration/presentation. All presentations will be made via remote access Zoom meeting and limited to a fixed amount of time.
- h. Best and Final Offers: Finalists may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers on the date indicated in the Sequence of Events above.
- i. Contract Award: After Northern management's review and acceptance of a) the Evaluation Committee's recommendation, b) any Contractor requested modifications of the proposed contract, and/or c) any Contractor specific terms and conditions, an award will be issued on

the date indicated in the Sequence of Events, or as soon thereafter as possible. This date is subject to change at the discretion of the Chief Procurement Officer. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror in the time specified, Northern reserves the right to finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process.

- j. **Protest Deadline:** Any protest by an Offeror must be timely and in conformance with Section 13-1-172 NMSA 1978 and applicable procurement regulations. A Protest Manager has been named in this RFP, pursuant to NMSA 1978, § 13-1-172. **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 RFP. The 15-calendar day protest period shall begin on the day following the award of contracts and will end at 5:00 pm MST/DST on the 15th day. Written protests must include the name and address of the protestor, the RFP number, a statement of the grounds for protest, (including appropriate supporting exhibits), and it must specify the ruling/remedy requested. Protests received after the deadline will not be accepted. The protest must be delivered to:

Cheryl James, CPO – Protest Manager
Northern New Mexico College
921 N. Paseo de Oñate
Española, NM 87532

II. SPECIFICATIONS

A. Mandatory Specifications

In addition to providing responses to the items in the Scope of Work, Offerors must provide a written response and/or a reference to an appropriate paragraph(s) in supporting technical documentation for each specification. The proposal response must follow the order in which the specifications are listed. All specifications are **mandatory**. Offerors should respond in the form of a thorough narrative to each specification. The narratives along with required supporting materials, will be evaluated and awarded points accordingly.

1. Letter of Transmittal

Each proposal must be accompanied by a completed Letter of Transmittal signed by a person authorized to obligate the company. The letter of transmittal **must**:

- a) Identify the submitting organization;
- b) Identify the name, title, telephone number, and e-mail address of the person authorized by the organization to contractually obligate the organization;
- c) Identify the name, title, telephone number, and e-mail address of the person authorized to negotiate the contract on behalf of the organization;
- d) Identify the names, titles, telephone numbers, and e-mail addresses of persons to be contacted for clarification;
- e) Explicitly indicate acceptance of the conditions governing the procurement (per Appendix B – General Requirements);
- f) Be signed by the person authorized to contractually obligate the organization; and

- g) Acknowledge receipt of any and all amendments to this RFP.
2. Summary of Proposed Services
Offerors shall submit a summary of proposed services in response to RFP 2022-001 Legal Services as detailed in the Scope of Work. Please include a statement of ability to perform work for Northern on an on-call basis.
 3. Offeror's Company Experience
Offerors shall submit a statement of relevant company experience. Include in your narrative information: size of office with job categories of employees; years in business; information on your current financial status; any current litigation and/or bankruptcy; insurance coverages; and if background checks are a standard practice for the company. Please also provide a list of current customers utilizing your proposed solution/product.
 4. Offeror's Company References
Offeror's proposals shall include three (3) external references from clients who are willing to validate the Offeror's past performance on similar, recent contracts. The minimum information that shall be provided for each client reference follows:
 - a) Name of the contact person;
 - b) Name of the company or governmental entity;
 - c) Address of the contact person;
 - d) Telephone number of contact person;
 - e) Email address of the contact person;
 - f) A description of the products and services provided and dates the products and services were provided.
 5. Proposed Key Personnel Experience and Qualifications
Offerors shall provide short experience narratives of a Key Personnel who will be performing services under the contract and identify the Single Point of Contact for the firm that Northern can contact to discuss its needs and the assignment of the personnel most suited to the situation requiring legal assistance. Narratives(s) should include a resume, as well as a thorough description of the individual's education, knowledge, and relevant experience, as well as certifications or other professional credentials pertaining to the Scope of Work above.
 6. Proposal Presentation
If selected as a finalist, Offerors agree to provide the Evaluation Committee with a demonstration of their product/service and the opportunity to interview proposed Key Personnel members. Best and Final Offers may be included in the presentation if requested. A statement of concurrence is required.
 7. Cost
Offerors must provide an Hourly rates schedule for principals and employees. Also indicate the type and amount of any additional expenses, such as travel, per diem, copying charges, etc. Rates quoted shall not include gross receipts tax.

8. Proposal Presentation/Demonstrations

Finalists may be requested by the Evaluation Committee to participate in a presentation/demonstration of their proposed products/services via a remote Zoom meeting per the Sequence of Events.

9. Campaign Disclosure Form

A completed Campaign Contribution Disclosure Form is required for all contracts secured by competitive sealed bid pursuant to NMSA 1978 13-1-191.1.

10. Resident Business Preference

Pursuant to Section 13-1-21 and Section 13-1-22 NMSA 1978 a resident business possessing a valid resident business certificate shall receive an additional 50 points. The Offeror's proposal must contain a copy of a valid Resident Business Preference Certificate issued by the New Mexico Taxation and Revenue Department in order to qualify for the preference. Please note: An Offeror may only receive one preference.

11. Resident Veterans Preference

Pursuant to Section 13-1-21 and Section 13-1-22 NMSA 1978 a resident veteran possessing a valid New Mexico Resident Veterans Preference Certificate shall receive an additional 100 points. The Offeror's proposal must contain a valid Resident Veterans Preference Certificate issued by the New Mexico Taxation and Revenue Department in order to qualify for the preference. Please note: An Offeror may only receive one preference.

IV. EVALUATION

A. Evaluation Point Summary

The following is a summary of evaluation factors with point value assigned to each.

| <u>FACTOR</u> | <u>POINTS AVAILABLE</u> |
|--|-------------------------|
| 1. Letter of Transmittal | Pass/Fail |
| 2. Summary of Proposed Services | 100 |
| 3. Company Experience | 200 |
| 4. Company References | 100 |
| 5. Proposed Personnel Experience and Qualifications | 150 |
| 6. Proposal Presentation – Statement of Concurrence | Pass/Fail |
| 7. Cost | 200 |
| 8. Proposal Presentation/Demonstration | 100 |
| 9. Campaign Contribution Disclosure Form | Pass/Fail |
| SUBTOTAL | 850 |
| Additional Optional Points | |
| 10. New Mexico Resident Business Preference; <u>or</u> | 50 |
| 11. New Mexico Resident Veteran Preference | 100 |

B. Evaluation Factors

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

1. Letter of Transmittal (Pass or Fail).
2. Summary of Proposed Services (100 points)
Point will be awarded based on upon the Offeror's proposed services and responsiveness to Legal Services needs as detailed in the Scope of Work.
3. Offeror's Company Experience (200 points)
Points will be awarded based upon and evaluation of the documented company experience including subcontractors, if applicable, providing services to institutions of higher education, and public agencies/administrative bodies in the State of New Mexico.
4. Offeror's Company References (100 points)
Points for company references will be awarded based upon an evaluation of the Offeror's work for previous clients receiving similar services to those proposed by the Offeror for this contract. Note: points are awarded based upon the responses to the Past Performance Questionnaires.
5. Proposed Personnel Experience and Qualifications (100 points)
Points for personnel experience will be awarded based upon an evaluation of each staff member's experience as it relates to their proposed role and the needs of this contract.
6. Proposal Presentation Concurrence – Pass/Fail
7. Cost (200 points)
Cost of services including cost saving proposals, such as staff training at no charge, and reduced charges for board meetings, etc.
8. Proposal Presentation (100 points)
If required, points for the proposal presentation will be awarded based on the criteria within the Scope of Work.
9. Campaign Contribution Disclosure Form (Pass/Fail)
A completed Campaign Contribution Disclosure Form is required for all contracts secured by competitive sealed bid pursuant to NMSA 1978 13-1-191.1.
10. Resident Business Preference (50 points)
Fifty (50) points will be awarded if the proposal contains a copy the New Mexico Taxation and Revenue Department's resident business preference certificate unless a Resident Veterans Preference Certificate is also submitted in which case the higher number of points from the Resident Veterans Preference shall be awarded instead.
11. Resident Veterans Preference (100 points)

One hundred (100) points will be awarded if the proposal contains a copy of the Taxation and Revenue Department's Resident Veterans Certificate.

C. Evaluation Process

The evaluation process will follow the steps listed below:

1. All Offeror proposals will be reviewed for compliance with the mandatory requirements stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the Offeror for clarification of proposal responses.
3. The Evaluation Committee may use other sources of information to perform the evaluation.
4. Responsive proposals will be evaluated on the factors that have been assigned a point value. Responsible Offerors with the highest scores will be selected as Finalists. Finalists who are asked to submit revised proposals for the purpose of obtaining Best and Final offers will have their points recalculated accordingly. Points awarded from the oral presentations will be added to the previously assigned points to attain final scores. The responsible Offeror whose proposal is most advantageous to the Northern will be recommended for contract award. Please note: a serious deficiency in the response to any one factor may be grounds for non-selection regardless of overall score.

Appendixes

- Appendix A – Letter of Transmittal
- Appendix B – General Requirements
- Appendix C – Campaign Contribution Disclosure Form
- Appendix D – Sample Service Contract
- Appendix E – RFP Mandatory Requirements Checklist

APPENDIX A

**REQUESTS FOR PROPOSALS
RFP#2022-001
Legal Services**

LETTER OF TRANSMITTAL FORM

The failure to complete all of the items in this form will result in the disqualification of the proposal.

1. Identity (Name) and Mailing Address of the submitting organization/proposed Contractor:

2: Identify the name, title, telephone and fax numbers, and e-mail address of the person authorized by the organization (s) to contractually obligate the organization (s).

Name: _____
Title: _____
Telephone Number: _____ Fax Number: _____
Email Address: _____

3. For the person (s) to be contacted for clarifications:

Name: _____
Title: _____
Telephone Number: _____ Fax Number: _____
E-Mail Address: _____

4. List Proposed Subcontractors: _____

On behalf of the submitting organization named, I accept the conditions and general requirements governing the procurement (see Appendix B). I concur that submission of our proposal constitutes acceptance of the evaluation factors of this RFP. I agree that this proposal is binding and firm for a period of 120 days after the due date for receipt of proposals.

Signature of Authorized Official (listed in #2 above) **Date:** _____, 20__

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Northern New Mexico College

Request for Proposals - General Requirements

All RFP procurements will be conducted in accordance with the New Mexico Procurement Code (13-1-1 through 13-1-199 NMSA 1978).

1. Acceptance of Conditions Governing the Procurement: Offerors must indicate their acceptance of the Conditions Governing the Procurement via the Letter of Transmittal. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.
2. Incurring Cost: Any cost incurred by the Offeror in preparation, transmittal, presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror.
3. Prime Contractor Responsibility: Any contract that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of the contract with the Agency. The Agency will make contract payments to only the prime contractor.
4. Subcontractors: Use of subcontractors shall be clearly explained in the proposal, and major subcontractors shall be identified by name. The prime contractor shall be wholly responsible for the entire performance whether or not subcontractors are used.
5. Amended Proposals: An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals shall be complete replacements for a previously submitted proposal and shall be clearly identified as such in the transmittal letter. The 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 shall submit a written withdrawal request signed by the Offeror's duly authorized representative addressed to the Procurement Manager. The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.
7. Proposal Offer Firm: Responses to this RFP, including proposed costs, will be considered firm for one hundred and twenty (120) days after the due date for receipt of proposals or ninety (90) days after receipt of a best and final offer if one is submitted.
8. Disclosure of Proposal Contents: The proposals will be kept confidential until a contract is awarded. At that time, all proposals and documents pertaining to the

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proposals will be open to the public, except for the material that is proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements.

Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. Confidential data is normally restricted to confidential financial information concerning the Offeror's organization and data that qualifies as a trade secret in accordance with New Mexico Uniform Trade Secrets Act [§57-3A-1 to 57-3A-7 NMSA 1978]. The cost of services proposed shall not be designated as proprietary or confidential information.

If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, the Chief Procurement Officer shall examine the Offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

9. No Obligation: This procurement in no manner obligates NNMC or any of its departments or other subdivisions to the eventual lease, purchase, etc., of any proposed professional services proposed until a valid written contract is awarded by the Chief Procurement Officer and other required approval 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 NNMC.
11. Sufficient Appropriation: Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such termination will be effected by sending written notice to the contractor. The Agency's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.
12. Legal Review: The Agency requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror concerns must be promptly brought to the attention of the Procurement Manager.
13. Governing Law: This procurement and any agreement with Offerors that may result shall be governed by the laws of the State of New Mexico.
14. Basis for Proposal: Only information supplied by the Agency in writing through the Procurement Manager or in this RFP should be used as the basis for the preparation of Offeror proposals.

Appendix B

15. Contract Terms and Conditions: The contract between the Agency and a contractor will follow the format specified by the Agency and contain the terms and conditions set forth in Appendix B, "Sample Contract". However, the Agency reserves the right to negotiate with a successful Offeror provisions in addition to those contained in this RFP. The contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal will be incorporated into and become part of the contract.

Should an Offeror object to any of the Agency's terms and conditions, as contained in this Section or in Appendix B, that Offeror shall propose specific alternative language to the referenced provisions. The Agency may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions are not acceptable to the Agency and will result in disqualification of the Offeror's proposal.

Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording in order for the proposed alternate wording to be considered.

16. Offeror's Terms and Conditions: Offeror's must submit with their proposal a complete set of any additional terms and conditions which they request be included in a contract negotiated with the Agency. The Agency may or may not accept the additional language, at the Agency's sole discretion.
17. Offeror Qualifications: The Evaluation Committee may make such investigations as necessary to determine the ability of the Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any Offeror who is not a Responsible Offeror or fails to submit a Responsive Offer as defined as defined in Sections 13-1-83 and 13-1-85 NMSA 1978.
18. Right to Waive Minor Irregularities: The Evaluation Committee reserves the right to waive minor irregularities. The Evaluation Committee also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the mandatory requirements and/or doing so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.
19. Change in Contractor Representatives: The Agency reserves the right to require a change in contractor representatives if the assigned representatives are not, in the opinion of the Agency, meeting its needs adequately.
20. Notice: The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. The State of New Mexico criminal statutes also impose felony penalties for bribes, gratuities and kick-backs.

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21. Agency Rights: The Agency reserves the right to accept all or a portion of an Offeror's proposal including the right to purchase software or services from authorized price agreements or in accordance with applicable provisions procurement regulations.
22. Right to Publish: Throughout the duration of this procurement process and contract term, potential Offerors, Offerors and contractors shall secure from the Agency written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement or the subsequent contract. Failure to adhere to this requirement may result in disqualification of the Offeror's proposal or termination of the contract.
23. Ownership of Proposals: All documents submitted in response to this Request for Proposals shall become the property of the Agency after the contract has been awarded. However, non-selected Offerors may retrieve at their expense any technical or user documentation submitted with their proposals after the expiration of the protest period.
24. Electronic Mail Address Required: A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror shall have a valid e-mail address to receive this correspondence.
25. Use of Electronic Versions of this RFP: This RFP is being made available by electronic means. If accepted by such means, the Offeror acknowledges and accepts full responsibility to insure that no changes are made to the RFP. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the Procurement Manager, the version maintained by the Procurement Manager shall govern.
26. New Mexico Employees Health Coverage: For all contracts solicited and awarded on or after January 1, 2008: 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, offer must agree to:
 - a) have in place and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2008 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed one million dollars or;
 - b) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2009 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$500,000 dollars or;
 - c) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later

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than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

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.
- (d) 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 website link to additional information
<http://insurenemexico.state.nm.us/>.

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, \$500,000 or \$1,000,000.

- 27. Letter of Transmittal: Each proposal shall be accompanied by a letter of transmittal (Please Refer to RFP Appendix A). CAUTION: The proposal shall be binding without restriction. Offerors shall not include language in the Letter Of Transmittal such as “subject to successful negotiation” or words to that effect. The letter of transmittal SHALL follow the format provided and it shall be signed by the appropriate representatives. Failure to follow these instructions shall result in the rejection of the proposal.
- 28. Confidentiality: Any confidential information provided to, or developed by, the contractor in the performance 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.
- 29. Campaign Contribution Disclosure Form: A completed Campaign Contribution Disclosure Form is required for all potential contractors secured by competitive sealed bid pursuant to NMSA 1978 13-1-191.1.
- 30. Conflict of Interest – Governmental Conduct Act: The Offeror warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under a contract resulting from this RFP. The Offeror certifies requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA1978, regarding contracting with a public officer or state employee or former state employee have been followed.

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

Furthermore, the state agency or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

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

The following definitions apply:

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

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to either statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or

unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“Family member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

“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.

“Person” means any corporation, partnership, individual, joint venture, association or any other private legal entity.

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

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

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

--OR--

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

Signature

Date

Title (Position)

Appendix D

SAMPLE
Contract Terms and Conditions

[Governmental Entity Name]
PROFESSIONAL SERVICES CONTRACT
FOR
[RFP Title]

THIS AGREEMENT is made and entered into by and between the [insert Purchasing Agency Name] [Governmental Entity Name], herein after referred to as the "Purchasing Agency", and [insert contractor name] herein after referred to as the "Contractor."

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. Definitions

- a. "Contract Administrator" means the individual designated by the Purchasing Agency to administer the contract after it has been executed. The Contract Administrator shall be [Name or Title].
- b. "Project Manager" means the individual assigned by the Purchasing Agency to manage the project and administer this Agreement. The Project Manager shall be [Name or Title].
- c. "Project Plan" means a document approved by the Project Manager which includes a list of tasks to be performed and the time frame for the completion of each task. All work under this Agreement shall be performed in accordance with the approved Project Plan.

2. Scope of Work:

[insert detail statement of work including deliverables]

Duties and Responsibilities:

[insert Contractor duties and responsibilities]

[insert Purchasing Agency duties and responsibilities]

Additional Information:

The following listed contractor supplied personnel shall perform services under this agreement:

[insert the names of contractor personnel and consultant classification from the contractor's proposal]

3. Work Environment

[insert location and facilities that will used in the performance of the scope of work. List all Purchasing agency supplied resources and facilities including computer resources to be used, if any]

4. Payment Provisions

All payments under this Agreement are subject to the following provisions.

a. Acceptance -The Purchasing Agency shall determine if the services provided meet specifications. No payment shall be made for any service until the services and/or deliverables have been accepted in writing by the Contract Administrator.. Unless otherwise agreed upon between the Purchasing Agency and the Contractor, within _____() days from the date the Purchasing Agency receives written notice from the Contractor that payment is requested for services, the [Contract Administrator or Project Manager]shall issue a written certification of complete or partial acceptance or rejection of the services or deliverables. Upon certification that the services or deliverables have been received and accepted, payment shall be tendered to the Contractor within _____() days after the date of certification. If the payment is made by mail, the payment shall be deemed tendered on the date it is postmarked.

b. Rates - The contractor agrees to perform billable work at the following rate(s) of per hour.

| Service Category | Rate Per Hour On-Site | Rate Per Hour off-Site |
|------------------|-----------------------|------------------------|
| 1. _____ | _____ | _____ |
| 2. _____ | _____ | _____ |
| 3. _____ | _____ | _____ |

c. Compensation - The total compensation under this Agreement will not exceed [insert \$]. The Contractor shall not be reimbursed for any travel or per diem expenses. All other expensed shall be approved by the Project Manager before they are incurred. Travel time is not billable.

d. Payment of Invoice - Payment shall be made monthly upon the receipt and acceptance if an invoice and a detailed time log of work perfumed. The time log shall indicate the on-site and off-site service hours performed by date, deliverable and the name of the individual performing the services. Payment will be made to the Contractor's designated mailing address.

e. Payment of Taxes - The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

f. Invoices – Invoices and time logs shall be submitted to the Contract Administrator.

- g. Facilities and Equipment - The Purchasing Agency shall provide Contractor personnel with reasonable office work space and facilities including access to a local telephone service, copy machine usage and office supplies. The Contractor shall provide Contractor personnel with any required personal computer equipment and software and shall reimburse the Purchasing Agency for all long distance telephone calls charged to the Purchasing Agency. **[insert any additional provisions]**

5. Term

This Agreement shall begin on date approved by the [insert governing authority name] and end on [insert date]. [insert renewal options from RFP here, if any]. This Agreement including all extensions and renewals shall not exceed [number] calendar years in duration.

6. Termination

This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least [insert number of days] days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. THE PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE OTHER LEGAL RIGHTS AND REMEDIES AFFORDED THE STATE INS SUCH CIRCUMSTANCES AS CONTRACTOR'S DEFAULT/BREACH OF CONTRACT.

7. Status of Contractor

The Contractor, and his agents and employees, are independent contractors performing professional services for the Purchasing Agency and are not employees of the [Governing Entity Name]. The Contractor, and his agents and employees, shall not accrue leave, retirement, insurance, bonding, use of government vehicles, or any other benefits afforded to employees of the [Governing Entity Name] as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.

8. 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 prior written approval of the Purchasing Agency and the [Governing Entity Name].

9. Subcontracting

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without written approval from the Contract Administrator. The following subcontractor(s) have been approved to supply resources for this Agreement

_____.

10. Records of Audit

During the term of this Agreement and for three years thereafter, the Contractor shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by the Purchasing Agency, [Governing Entity Name] , and appropriate federal authorities. The Purchasing Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Purchasing Agency to recover excessive or illegal payments.

11. Appropriations

The terms of this Agreement are contingent upon sufficient appropriations and authorization for the performance of this Agreement. If sufficient appropriations and authorization are not made, this Agreement shall terminate upon written notice being given by the Purchasing Agency to the Contractor. The Purchasing Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

12. Release

The Contractor, upon final payment of the amount due under this Agreement, releases the Purchasing Agency, its officers and employees, and the [Governing Entity Name] from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the [Governing Entity Name], unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

13. 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 prior written approval by the Contract Administrator.

14. Product of Service: Copyright

All materials developed or acquired by the Contractor under this Agreement shall become the property of the [Governing Entity Name] and shall be delivered to Purchasing Agency no later than the termination date of this Agreement. Nothing produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright by or on behalf of the Contractor. The original and one copy of all materials, work papers, meeting notes, design documents, or other documents produced by the Contractor shall be indexed and placed in appropriately labeled binders and delivered to the Project Manager at conclusion of the Agreement.

[Note: The following paragraph is for software development contracts only]
The source code to any custom-developed software under this Agreement shall become the

property of the [Governing Entity Name] and shall be delivered to the Project Manager on media of the Project Manager's choice no later than the termination date of this Agreement.

15. Conflict of Interest

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

16. Amendment

This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto. The parties to this contract include the Purchasing Agency, the Contractor, the Chief Procurement Officer and [List additional parties, if any].

17. Approval of Contractor Personnel

Once work has started, no changes of personnel will be made by the contractor without the prior written consent of the Contract Administrator. Replacement of any contractor personnel, if approved, shall be with personnel of equal ability, experience and qualifications. The Contractor will be responsible for any expenses incurred in familiarizing the replacement personnel to insure their being productive to the project immediately upon receiving assignments. Approval of replacement personnel shall not be unreasonably withheld.

The Purchasing Agency shall retain the right to require or request the removal of any of the Contractor's personnel at any time.

18. Scope of Agreement

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 understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

19. Equal Opportunity Compliance

The Contractor agrees to abide by all Federal and State laws, rules and regulations, and executive orders of the Governor of the State [State Name], pertaining to equal employment opportunity. In accordance with all such laws, rules, and regulations, and executive orders of the Governor of the State of State Name], the Contractor agrees to assure that no person in the United States shall on the grounds of race, color, religion, national origin, sex, sexual preference, age or handicap, 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 to be not in compliance with these

requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

20. Indemnification

The Contractor shall hold the [Governing Entity Name] and its agencies and employees harmless and shall indemnify the [Governing Entity Name] and its agencies and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the contractor, its agents, officers, employees or subcontractors. Contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the Purchasing Agency, its officers or employees.

21. Applicable Law

This Agreement shall be governed by the laws of the State of [State Name]. Proper venue for legal action regarding this agreement shall be in the county of [County Name].

22. Limitation of Liability

The Contractor's liability to the Purchasing Agency for any cause whatsoever shall be limited to the purchase price paid to the Contractor for services that are the subject of the Purchasing Agency's claim. The foregoing limitation does not apply to Paragraph 20 of this Agreement or to damages resulting from personal injury caused by the Contractor's negligence.

23. Incorporation by Reference and Precedence

This Agreement is derived from (1) the Request for Proposal, written clarifications to the Request for Proposals and Purchasing Agency response to questions; (2) the Contractor's Best and Final Offer, and (3) the Contractor's response to the Request for Proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) Amendments to the Agreement in reverse chronological order; (2) the Agreement, including exhibits thereto, if any; (3) the Contractor's Best and Final Offer; (4) the Request for Proposals, including appendices thereto including any documents incorporated by reference and written responses to questions and written clarifications and (5) the Contractor's proposal submitted in response to the Request for Proposals.

24. Warranties

The Contractor warrants that all services provided under this Agreement will be free from defects. The warranty period for services will be for a period of six (6) months after the acceptance of the deliverable. Warranty work will be performed at the Contractor's expense.

25. Project Reporting

The Contractor will provide periodic status reports to the Project Manager. Status reports will include as a minimum a discussion of project progress, problems encountered and recommended solutions, identification of policy or management questions, and requested project plan adjustments.

26. 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 Purchasing Agency.

27 Insurance [Insert Evidence of Insurance Requirements, if any]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of execution by [Governing Authority], below.

[Governing Entity Name]
[insert Purchasing Agency's name])

(Contractor)

BY: _____

BY: _____

TITLE: _____

TITLE: _____

Appendix E**RFP MANDATORY REQUIREMENTS CHECKLIST**

| | |
|---|---|
| <u>Submission Requirements</u> | |
| Proposal is formatted for standard 8 1/2 x 11 paper size, in 12 point type font with page numbers and organized in the following format: | |
| <u>File A</u> includes: Transmittal Letter, Table of Contents, Summary of proposed Services, Response to Mandatory Specifications, supporting material and/or technical documentation, the Campaign Contribution Disclosure Form, and any applicable preferences. | |
| <u>File B</u> includes: Itemized proposed fixed costs, and Offeror’s Additional Terms and Conditions (optional). | |
| If emailing proposal, the items above <i>must</i> be in PDF format. | |
| <i>MANDATORY SPECIFICATIONS</i> | |
| Yes / No | 1. Letter of Transmittal |
| Yes / No | 2. Summary of Proposed Services |
| Yes / No | 3. Offeror’s Company Experience |
| Yes / No | 4. Offeror’s Company References |
| Yes / No | 5. Offeror’s Proposed Personnel Experience and Qualifications |
| Yes / No | 6. Proposal Presentation – Statement of Concurrence is required. |
| Yes / No | 7. Cost – Hourly rate schedule for principals and employees |
| Yes / No | 8. Proposal Presentation – Finalists only |
| Yes / No | 9. Campaign Contribution Disclosure Form Appendix C |
| Yes / No | 10. New Mexico Residential Business Preference (if applicable) <u>OR</u> |
| Yes / No | 11 New Mexico Residential Veterans Preference (if applicable) |