

STATE OF NEW MEXICO



**DEPARTMENT OF GAME AND FISH**

**ADMINISTRATIVE SERVICES DIVISION**

**REQUEST FOR PROPOSALS (RFP)**

**FROM  
LAWYERS AND LAW FIRMS**

**FOR  
Professional Legal Services-Federal Endangered Species Act  
and Related Laws**

**RFP# 24 516 2101 00001**

Issuance Date:  
August 22, 2023

Due Date:  
October 10, 2023

**Contract start date January 20, 2024**

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## **I. INTRODUCTION**

### ***A. PURPOSE OF THIS REQUEST FOR PROPOSALS***

The New Mexico Department of Game and Fish (“Department”) requests proposals from lawyers and law firms to provide professional legal services. This request for proposals (“RFP”) will result in a multiple source award through which contracts may be awarded to one or more lawyers or law firms. A lawyer’s or law firm’s proposal shall include evidence of its experience and legal expertise as applicable to the Scope of Services contained herein.

### ***B. SUMMARY SCOPE OF WORK***

At times, the Department requires external professional legal services and support, particularly in areas requiring specialized subject matter expertise, significant staffing or resource commitments, or where it is otherwise in the best interests of the Department to use external legal services.

Scope of Services:

Legal services, including: litigation including trial(s) and appeal(s), drafting and negotiation of agreements or other legal instruments, representation in administrative/agency processes, comment on federal rulemaking (particularly with respect to species listed or proposed to be listed as endangered or threatened), alternative dispute resolution, compliance with law, and, provision of legal advice or opinions; related to federal environmental laws including the Endangered Species Act, the National Environmental Policy Act, or any other related federal law, regulation, or rule affecting the environment or wildlife.

The Scope of Services is intended to illustrate the general legal services sought in this RFP and is non-exhaustive. Upon entry into a contract with a lawyer or law firm(s) specific legal services shall be negotiated.

In its proposal, an Offeror shall include a signed statement that to the best of its knowledge and belief that it currently represents no clients adverse to the Department or the New Mexico State Game Commission (“SGC”); or its representation of another client or clients in matters involving the Department or the SGC will not adversely affect its ability to perform the requested services. If applicable, this statement shall include a list of all current matters involving the Department or the SGC in which the Offeror represents another client or clients. The Department’s Office of General Counsel retains the discretion to consent to or reject representation by any Offeror under the provisions of Rule 16-107 NMRA.

### ***C. SCOPE OF PROCUREMENT***

The initial term of any contract executed under this RFP shall be one (1) to four (4) years at the discretion of the Department. In no case will any contract including all amendments thereof, exceed a total of four (4) years in duration from the date of the initial Agreement(s). Workload is dependent based on the needs of the Department. There is no guarantee of work being given to contractor.

### ***D. QUALIFIED OFFEROR***

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

### ***E. RFP PROCUREMENT MANAGER***

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

Victoria Romero, Procurement Manager  
Professional Legal Services 24-516-2101-00001  
New Mexico Department of Game and Fish  
1 Wildlife Way  
Santa Fe, New Mexico 87505  
Telephone Number (505) 709-5300  
E-mail: [Victoria.Romero@dgf.nm.gov](mailto:Victoria.Romero@dgf.nm.gov)

All Questions: must be emailed to Victoria Romero  
In subject line write RFP# 24 516 2101 00001 Questions

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All Proposals: Must be submitted electronically. Refer to section II.B.5 for instructions.  
Only **electronic** proposal submission is allowed. **Do not** submit hard copies.

Any inquiries or requests regarding this procurement should be emailed to the RFP Procurement Manager ([Victoria.Romero@dgf.nm.gov](mailto:Victoria.Romero@dgf.nm.gov)). All inquiry or requests sent to Procurement Manager must refer to RFP# 24-516 -2101-00001 in the subject line. Offerors may contact ONLY the RFP Procurement Manager regarding this procurement. Other state employees or Evaluation Committee members do not have the authority to respond on behalf of the Agency.

## ***F. DEFINITION OF TERMINOLOGY***

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

**“Agency”** means the New Mexico Department of Game and Fish.

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

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

**“Award Notification”** means transmission of the notice of final award to offeror(s).

**“Business Hours”** means 8:00 AM thru 5:00 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.

**“Close of Business”** means 5:00 PM Mountain Standard or Daylight Time, whichever is in effect on the date given.

**"Contract"** means any agreement for the procurement of items of tangible personal property, services or construction.

**"Contractor"** means any business having a contract with a state agency or local public body.

**"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.

**"Desirable"** – the terms "may", "can", "should", "preferably", or "prefers" identify a desirable or discretionary item or factor.

**"Evaluation Committee"** means a body appointed to perform the evaluation of Offers' proposals.

**"Evaluation Committee Report"** means a report prepared by the RFP Procurement Manager and the Evaluation Committee for contract award. It will contain written determinations resulting from the procurement.

**“Finalist”** means an Offeror who meets all the mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

**“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.

**“IT”** means Information Technology.

**"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 will result in the rejection of the Offeror’s proposal.

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

**"Offeror"** is any person, corporation, or partnership who chooses to submit a proposal.

**"Procurement Officer"** 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.

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

**“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.

**"Request for Proposals"** means all documents, including those attached or incorporated by reference, used for soliciting proposals.

**"Responsible Offeror"** means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services, or items of tangible personal property described in the proposal.

**"Responsive Offer"** or 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.

**“SPD”** means State Purchasing Division of the New Mexico State General Services Department.

**"Staff"** means any individual who is a full-time, part-time, or an independently contracted employee with the Offerors’ company.

**“State”** means the State of New Mexico.

**“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 the State of New Mexico. “State agency” includes the purchasing division of the general services department and the state purchasing agent but does not include local public bodies.

**“State Purchasing Agent”** means the director of the purchasing division of the general services department.

## ***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 RFP Procurement Manager and scheduling an appointment. The library contains information listed below:

Procurement Regulations and Request for Proposal – RFP instructions:  
<http://www.generalservices.state.nm.us/statepurchasing/>



## II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule, description and conditions governing the procurement. Periods expressed in days in the RFP shall be calculated pursuant to Rule 1-006 NMRA.

### ***A. SEQUENCE OF EVENTS***

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

<b>Action</b>	<b>Responsibility</b>	<b>Date</b>
1. Issue RFP	Agency	08/22/2023
2. Distribution List Response Due	Potential Offerors	09/05/2023
3. Deadline to Submit Questions	Potential Offerors	09/12/2023
4. Response to Written Questions	Agency	09/22/2023
<b>5. Submission of Proposal</b>	<b>Offerors</b>	<b>10/10/2023 3PM Mountain Time</b>
6. Proposal Evaluation	Evaluation Committee	10/11/2023 – 10/19/2023
7. Selection of Finalist	Evaluation Committee	10/20/2023
8. Oral presentation by Finalists (If Applicable)	Evaluation Committee	TBD
9. Best and Final Offers From Finalists (If Applicable)	Offerors	TBD
10. Finalize Contract	Agency Offeror	11/01/2023 – 12/01/2023
11. Contract Award	Agency	12/01/2023
12. Protest Deadline	Offerors	15 days after Award Notification

### ***B. EXPLANATION OF EVENTS***

The following paragraphs describe the activities listed in the sequence of events shown in Section II, Paragraph A, above.

#### **1. Issuance of RFP**

This RFP is being issued by the Agency. **As a reminder the contract start date will not begin until January 20, 2024.**

Additional copies of the RFP can be obtained from the New Mexico Department of Game and Fish Website, <http://wildlife.state.nm.us/>.

## **2. Distribution List Response Due**

Potential Offerors should hand deliver, return by facsimile or registered or certified mail the "Acknowledgement of Receipt 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 RFP Procurement Manager by 4:00 pm Mountain Standard/ Mountain Daylight Time, on 09/05/2023.

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 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 RFP Procurement Manager as to the intent or clarity of this RFP until close of business on September 12, 2023, as indicated in the sequence of events. All written questions must be addressed to the RFP Procurement Manager as declared in Section I, Paragraph F.

## **4. Response to Written Questions**

Written responses to written questions and any RFP amendments 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 written requests for clarification of distributed answers and/or amendments must be received by the Procurement Manager no later than one (1) day after the answers and/or amendments were issued.

## **5. Submission of Proposal**

***ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE RFP PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 3:00 PM MOUNTAIN TIME ON OCTOBER 10, 2023.*** Proposals received after this deadline will not be accepted. The date and time of receipt will be recorded on each proposal.

Submissions of all proposals must be accomplished via electronic submission as follows: send an email to Procurement Manager notifying that the Offeror is ready to submit a proposal. The Procurement Manager will then email the Offeror a secured link to upload the documents. The Offeror shall submit only one electronic copy of each portion of its proposal (Technical and Cost) as outlined below. The proposals as described shall be submitted as separate electronic files. Proposals submitted by facsimile, mail, or parcel service will not be accepted.

A public log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to Section 13-1-116 NMSA 1978, the contents of 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 RFP. 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 RFP 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 Finalist**

The Evaluation Committee will select and the RFP Procurement Manager will notify the finalist Offeror as per schedule Section II, A Sequence of Events or as soon as possible. Only finalists will be invited to participate in the subsequent steps of the procurement. The Department, at its discretion, may choose to forgo a shortlist and enter into negotiations with the highest ranked Offeror resulting from the written evaluations.

## **8. Oral presentation by Finalists (If Applicable)**

Finalist Offerors may be asked to present their proposals to the Evaluation Committee. The Procurement Manager will schedule the time and location for each Offeror presentation. All Offeror presentations will be held, if at all, in the month of October 2023; specific date, time and location TBD. Each presentation will be limited to one half (1/2) hour in duration. Oral presentation may be conducted virtually at the discretion of the Procurement Manager.

## **9. Best and Final Offers from Finalists (If Applicable)**

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers as per schedule Section II.

## **10. Finalize Contractual Agreements**

The Contractual agreement resulting from this RFP will be finalized with the most advantageous Offeror 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 Agency. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror in the time specified, the Agency reserves the right to finalize a contractual

agreement with the next most advantageous Offeror(s) without undertaking a new procurement process.

## **11. Contract Awards**

The Department anticipates awarding the contract(s) on or before December 31, 2023 via the Award Notification; the services pursuant to the contract will not begin until January 20, 2024, i.e. the contract term beginning date. No new contracts shall be initiated after expiration of the offeror's firm proposal, per section II C. 7. The contract shall be awarded to the Offeror(s) whose proposal is most advantageous, taking into consideration the evaluation factors set forth in the RFP. The most advantageous proposal may or may not have received the most points. The award is subject to appropriate Department and State approval.

## **12. Protest Deadline**

Any protest by an Offeror must be timely and in conformance with Section 13-1-172 NMSA 1978 and applicable procurement regulations. The 15-calendar-day protest period shall begin on the day following the Award Notification and will end at 5:00 p.m. Mountain Time on the 15<sup>th</sup> day thereafter. Protests must be emailed 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 emailed to:

Timothy Sintas, Protest Manager,  
New Mexico Department of Game and Fish  
[Tim.Sintas@dgf.nm.gov](mailto:Tim.Sintas@dgf.nm.gov)

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 the Conditions Governing the Procurement section in the letter of transmittal. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.

### **2. Incurring Cost**

Any cost incurred by the 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. Contractor Responsibility**

Any contractual agreement that may result from this RFP shall specify that the 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 hiring a contractor by entering into a contractual agreement will make payments only to the contractor.

### **4. Subcontractors/Consent**

The use of subcontractors must be clearly explained in the proposal, and all subcontractors must be identified by name and their qualifications must be included as an attachment to the proposal. The contractor shall be wholly responsible for the entire performance of the contractual agreement whether or not subcontractors are used. Additionally, the 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. 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 must submit a written withdrawal request addressed to the RFP 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.

### **7. Proposal Offer Firm**

Responses to this RFP, including proposal prices for services, will be considered firm for three hundred sixty-five (365) days after the due date for receipt of proposals or three hundred fifty (350) 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**

A. Proposals will be kept confidential until negotiations and award is completed by the Agency. At that time, all proposals and documents pertaining to the proposals will be

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

- B. 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.
- C. Confidential data is restricted to:
  - 1. Confidential financial information concerning the Offeror's organization.
  - 2. Data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, Sections 57-3A-1 to 57-3A-7 NMSA 1978.
  - 3. PLEASE NOTE: The price of products offered or the cost of services proposed **shall not be designated** as proprietary or confidential information.

If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, the Agency 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 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 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 submitted in writing to the attention of the RFP 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 Agency through the RFP Procurement Manager or in this RFP should be used as the basis for the preparation of Offeror proposals.

### **15. Contract Terms and Conditions**

The contract between an agency and a contractor will follow the format specified by the Agency and contain the terms and conditions set forth in the Sample Contract attached herein as APPENDIX C. However, the contracting agency reserves the right to negotiate with any Offeror provisions in addition to those contained in the Sample Contract. 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 to contract terms and conditions set forth in the Sample Contract. 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 in the Sample Contract, 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 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.

### **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.

**17. Contract Deviations**

Any additional terms and conditions, which may be the subject of negotiation, 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 Sections 13-1-83 and 13-1-85 NMSA 1978.

**19. Right to Waive Minor Irregularities**

The Evaluation Committee reserves the right to waive minor irregularities. The Evaluation Committee also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the 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 changes 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, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil, 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.

**25. Confidentiality**

Any confidential information provided to, or developed by, the Contractor(s) 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. If accepted by such means, the Offeror acknowledges and accepts full responsibility to ensure that no changes are made to the RFP. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the agency, the Offeror acknowledges that the version maintained by the agency shall govern.

**28. New Mexico Employees Health Coverage**

- A. 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, Offeror must agree 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 no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
- B. 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 <http://insurenwemexico.state.nm.us/>.
- D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); 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 Unaltered located in APPENDIX B, as a part of their proposal. This requirement applies regardless of 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 disqualification.

## **30. Pay Equity Reporting Requirements**

- A. If the Offeror has ten (10) or more employees OR eight (8) or more employees in the same job classification, Offeror must complete and submit the required reporting form (PE10-249) if they are awarded a contract.
- B. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, Offeror must also agree to complete and submit the required form annually within thirty (30) calendar days of the annual bid or proposal submittal anniversary date and, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract.
- C. Should Offeror not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, offer must agree to provide the required report within ninety (90) calendar days of meeting or exceeding the size requirement.
- D. Offeror must also agree to levy these reporting requirements on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Offeror must further agree that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, offer will submit the required report, for each such subcontractor, within ninety (90) calendar days of that subcontractor meeting or exceeding the size requirement.”

### **31. Disclosure Regarding Responsibility**

- A. Any prospective Bidder/Offeror (hereafter Offeror) and any of its Principals who seek to enter into a contract greater than twenty thousand dollars (\$20,000.00) with any state agency or local public body for professional services, tangible personal property, services or construction agree to disclose whether they, or any principal of their company:
1. Are presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body.
  2. Have within a three-year period preceding this offer, been convicted of or had civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public ( federal, state or local) contract or subcontract; violation of Federal or state antitrust statutes related to the submission of offers; or 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. Are presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with, commission of any of the offenses enumerated in paragraph B of this disclosure.
  4. Have 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.
    - a. Taxes are considered delinquent if both of the following criteria apply:
      - i. 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.
      - ii. 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.
  5. 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 Offeror shall provide immediate written notice to the RFP Procurement Manager if, at any time prior to contract award, the Offeror learns that its disclosure was erroneous when submitting 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 withholding an award under this solicitation. However, the disclosure will be considered in the determination of the Offeror's responsibility. Failure of the Offeror 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 an Offeror 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. 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 RFP Procurement Manager. If it is later determined that the Offeror 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. 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 the Agreement. The Offeror certifies requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee or former state employee have been followed.

### **33. Signed Statement of Disclosure**

Offeror shall include a signed Statement of Disclosure. Statement of Disclosure shall include a signed statement that to the best of its knowledge and belief (1) it currently represents no clients adverse to the Department or the SGC; or (2) its representation of another client or clients in matters involving the Department or the SGC will not adversely affect its ability to perform the requested services. If applicable, this statement shall include a list of all current matters involving the Department or the SGC in which the Offeror represents another client or clients. The Department's Office of General Counsel retains the discretion to consent to or reject representation by any Offeror under the provisions of Rule 16-107 NMRA. Offeror shall generate its own letter to the Department.

### **III. RESPONSE FORMAT AND ORGANIZATION**

#### ***A. NUMBER OF RESPONSES***

Offerors shall submit only one proposal in response to this RFP. Also, as applicable, Offerors may submit one redacted copy for proprietary or confidential data.

#### ***B. NUMBER OF COPIES***

Offerors shall email their proposal, in a PDF format, as an attachment (titled ‘technical proposal’) and their cost proposal, in a PDF format, (titled ‘cost proposal’) to the email address specified in Section I, Paragraph F on or before the closing date and time for receipt of proposals.

#### ***C. PROPOSAL FORMAT***

All proposals must be submitted as a PDF document with standard 8 1/2 x 11 portrait orientation (landscape orientation or larger size is permissible for charts, spreadsheets, etc.). PDF documents must be organized with tabs (as hyperlinks or bookmarks) delineating each section. Offerors are **strongly encouraged** to limit their proposals to a maximum of 20 GB per submission section (e.g. Part 1 of 4, Part 2 of 4, etc.). Offerors are allowed to break a PDF into separate parts if the data size prevents it from being submitted as one PDF. The following proposal content and organization is designed for offerors bidding on all tasks. Offerors bidding on a portion shall adjust the content and organization accordingly.

##### **1. Proposal Content and Organization**

Proposal must be organized and indexed in the following format and must contain, at a minimum, all listed items in the sequence indicated:

- a. Letter of Transmittal (Specification 9)
- b. Table of Contents
- c. Proposal Summary (optional)
- d. Offeror’s Company Experience (Specification 1)
- e. Offeror’s Proposed Personnel Experience & Qualifications (Specification 2)
- f. Approach to the Scope of Services (Specification 3)
- g. Response to Specifications 5-10
- h. Response to Department Terms and Conditions
- i. Offeror’s Additional Terms and Conditions
- j. Other Supporting Material
- k. Completed cost response form (Specification 4)

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

included in the appropriate section of the proposal. All discussion of proposed costs, rates or expenses must occur only in the cost response section.

Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

Offerors may attach other materials that they feel may improve the quality of their responses. However, these materials should be included as items in a separate appendix.

## 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. SPECIFICATIONS 1-10*

Offerors should respond in the form of a thorough narrative to each mandatory specification below. The narratives along with required supporting materials will be evaluated and awarded points accordingly. **Failure to address Mandatory Specifications/Requirements will deem your proposal non-responsive.**

#### **1. Offeror's Company Experience**

Offerors shall submit company information including the name of the lawyer, principal member or officer of the law firm who will be responsible for the administration of the contract and a statement of relevant company experience, including experience of subcontractors, if applicable. Offerors should submit a thorough response to each of the following specifications.

- a. Offerors shall include an overview of the law firm including a summary of the firm's history. The overview shall include the type of organization and the state of origin, the date established, location of headquarters and other offices, number and location of employees and a description of the types of professional legal services offered.
- b. Offerors should include documentation describing the extent of their knowledge and experience in the different areas as specified in the Scope of Services.
- c. Offerors should include copies of appropriate professional certifications, licensing and/or other documented credentials.

## **2. Offeror's Proposed Personnel Experience and Qualifications**

Offerors shall submit a list, with resumes, of all proposed professional staff members, including any subcontractors, who will be performing services under this Agreement. Experience narratives shall be attached that describe the specific relevant experience of the staff members and subcontractors, if any, in relation to the role that member will perform for this Agreement. The narratives shall include the name of the individual proposed and should include a thorough description of their education, knowledge, relevant experience, areas of expertise, projects previously worked on and representative clients, as well as certifications or other professional credentials.

## **3. Approach to the Scope of Services**

Offerors must provide a thorough narrative identifying specifically the practice area or areas (see "Scope of Services," Section II.B.) for which the lawyer or law firm is proposing legal services. The narrative must describe the effort, a proposed schedule and the approach the lawyer or law firm will take to deliver the proposed legal services.

## **4. Cost**

Offerors shall propose firm, fixed, hourly rates for the desired services. The firm, fixed, hourly rates must include fringe benefits (if applicable), overhead costs for Contractor personnel, as well as Subcontractor personnel if appropriate. Proposed hourly rates will not include gross receipts tax. Gross receipts tax will be billed as a separate line item, at applicable rates, upon invoicing for services performed. For proposed hourly rates Offerors must use and submit with their proposal the "Cost Response Form," attached to this RFP as "APPENDIX G."

Deviations of the Cost Response form are NOT permitted. Additional lines will not count in the evaluation. Nor will additional cost lines become a part of the resulting contract in the event the Offeror should be awarded.

Identify billing rates for the personnel categories identified in the cost response form that would be expected to perform services for the Department.

Lowest Responsive Offer Cost Proposal

This Offeror's Cost Proposal X 50 = Points

## **5. Resident Business and/or Resident Veterans Business Preference**

To ensure adequate consideration and application of 13-1-21 NMSA (as amended), Offerors must include a copy of their New Mexico resident business preference and/or New Mexico resident veterans business preference.

## **6. 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). Points will be given to Offeror if submitted in original proposal. The Department will not award contract to vendor until this document is received.

## **7. Employee Health Coverage**

The Offeror must agree with the terms as indicated in APPENDIX D. The unaltered form must be completed, signed by the person authorized to obligate the Offeror's firm and submitted with Offeror's proposal. Points will be given to Offeror if submitted in original proposal. The Department will not award contract to vendor until this document is received.

## **8. Pay Equity Reporting**

The Offeror **must** agree with the requirements of reporting as defined in Section II.C.30. Report is due at the time of contract award. **A statement of concurrence with this requirement must be included in Offeror's submitted proposal.** Points will be given to Offeror if submitted in original proposal. The Department will not award contract to vendor until this document is received.

## **9. Letter of Transmittal**

Offeror's proposal must be accompanied by the Letter of Transmittal Form located in APPENDIX E which must be completed and signed by an individual person authorized to obligate the company. The letter of transmittal **MUST**:

- Identify the submitting business entity.
- Identify the name, title, telephone, and e-mail address of the person authorized by the Offeror organization to contractually obligate the business entity providing the Offer.
- Identify the name, title, telephone, and e-mail address of the person authorized to negotiate the contract on behalf of the organization (if different than (2) above).
- Identify the names, titles, telephone, and e-mail addresses of persons to be contacted for clarification/questions regarding proposal content.



- Identify sub-contractors (if any) anticipated to be utilized in the performance of any resultant contract award.
- Describe the relationship with any other entity which will be used in the performance of this awarded contract.
- Identify the following with a check mark and signature where required:
  - Explicitly indicate acceptance of the Conditions Governing the Procurement stated in Section II, Paragraph C.1;
  - Acceptance of Section V of this RFP; and
  - Acknowledge receipt of any and all amendments to this RFP.
- Be signed by the person identified in para 2 above.

## **10. Signed Statement of Disclosure**

In its proposal, an Offeror shall include a signed statement that to the best of its knowledge and belief (1) it currently represents no clients adverse to the Department or the State Game Commission (Commission); or (2) its representation of another client or clients in matters involving the Department or the Commission will not adversely affect its ability to perform the requested services. If applicable, this statement shall include a list of all current matters involving the Department or the Commission in which the Offeror represents another client or clients. The Department's Office of General Counsel retains the discretion to consent to or reject representation by any Offeror under the provisions of Rule 16-107 NMRA.

## 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.

<b>Factor</b>	<b>Points Available</b>
1. Offeror's Company Experience	15
2. Offeror's Proposed Personnel Experience and Qualifications	15
3. Approach to the Scope of Services	20
4. Cost/ Fees	50
	<b>100 Points</b>
5. Campaign Contribution Disclosure Form	Pass/Fail
6. Employee Health Coverage Form	Pass/Fail
7. Pay Equity Reporting (statement of concurrence)	Pass/Fail
8. Letter Of Transmittal	Pass/Fail
9. Signed Statement of Disclosure	Pass/Fail
10. Preference Points per Section IV A. 5	5 or 10
Total	<b>110 Points</b>

Table 1: Evaluation Point Summary

### B. EVALUATION FACTORS

Points will be awarded on the basis of the following evaluation factors: Evaluation factors will be scored based on required criteria section IV A of this RFP.

### C. EVALUATION PROCESS

The evaluation process will follow the steps listed below:

1. All offeror proposals will be reviewed for compliance with mandatory requirements stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The RFP Procurement Manager may contact the offeror for clarification of the response.

3. The Evaluation Committee may use other sources of information to perform the evaluation.
4. Responsive proposals will be evaluated on the factors in Section V that have been assigned a point value. The responsible offerors with the highest scores will be selected as finalist offerors based upon the proposals submitted. Finalist offeror's who are asked or choose 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 Agency, taking into consideration the evaluation factors in Section V, will be recommended for contract award. Please note however that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

## **APPENDIX A**

### **ACKNOWLEDGEMENT OF RECEIPT FORM**

APPENDIX A

REQUEST FOR PROPOSAL

Federal Endangered Species Act & Related Laws  
24 516 2101 00001

**Acknowledgement Of Receipt Form**

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that s/he has received a complete copy, beginning with the title page and table of contents, and ending with APPENDIX G.

The acknowledgement of receipt should be signed and emailed to the RFP Procurement Manager no later than 09/05/2023. Only potential Offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all Offeror written questions and the written responses to those questions as well as RFP amendments, if any are issued.

FIRM: \_\_\_\_\_

REPRESENTED BY: \_\_\_\_\_

TITLE: \_\_\_\_\_ PHONE NO.: \_\_\_\_\_

E-MAIL: \_\_\_\_\_ FAX NO.: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

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

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

Victoria Romero, RFP Procurement Manager  
Professional Legal Services 24 516 2101 00001  
New Mexico Department of Game and Fish  
E-mail: [Victoria.Romero@dgf.nm.gov](mailto:Victoria.Romero@dgf.nm.gov)

**APPENDIX B**

**CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

## **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 C**

### **SAMPLE PROFESSIONAL SERVICES CONTRACT**

STATE OF NEW MEXICO

DEPARTMENT OF GAME AND FISH  
PROFESSIONAL SERVICES CONTRACT # \_\_\_\_\_

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **Department of Game and Fish**, hereinafter referred to as the "Agency," and **NAME OF CONTRACTOR**, hereinafter referred to as the "Contractor," and is effective as of the date set forth below upon which it is executed by the General Services Department/State Purchasing Division (GSD/SPD Contracts Review Bureau).

IT IS AGREED BETWEEN THE PARTIES:

**1. Scope of Work.**

The Contractor shall perform the following work:

**2. Compensation.**

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

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

(—OR—)

**(CHOICE – MULTI-YEAR)**

A. The Agency shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work at the rate of \_\_\_\_\_ dollars (\$\_\_\_\_\_) in FYXX (USE FISCAL YEAR NUMBER TO DESCRIBE YEAR; DO NOT USE FY1, FY2,

ETC.). The New Mexico gross receipts tax levied on the amounts payable under this Agreement in FYXX totaling (AMOUNT) shall be paid by the Agency to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (AMOUNT) in FYXX.**

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

B. Payment in FYXX, FYXX, FYXX, and FYXX is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the GSD/SPD. 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 GSD/SPD Contracts Review Bureau. This Agreement shall terminate on **(DATE)** 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 under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. 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.

**14. Merger.**

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**15. Penalties for violation of law.**

The Procurement Code, 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.

**16. Equal Opportunity Compliance.**

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

**17. Applicable Law.**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with 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 General Services Department/State Purchasing Division 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://insurenwnewmexico.state.nm.us/>.

**22. Invalid Term or Condition.**

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

**23. Enforcement of Agreement.**

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

**24. Notices.**

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

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

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

**25. Authority.**

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

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

By: \_\_\_\_\_  
Agency Director: Michael B Sloane

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Agency's Legal Counsel – Certifying legal sufficiency

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Agency's Chief Financial Officer: Paul Varela

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Contractor

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.

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

By: \_\_\_\_\_  
Taxation and Revenue Department

Date: \_\_\_\_\_

This Agreement has been approved by the GSD/SPD Contracts Review Bureau:

By: \_\_\_\_\_  
GSD/SPD Contracts Review Bureau

Date: \_\_\_\_\_

**APPENDIX D**

**NEW MEXICO EMPLOYEES HEALTH COVERAGE**

### ***New Mexico Employees Health Coverage***

- 1) 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.
- 2) 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.
- 3) 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>.
- 4) 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.

**APPENDIX E**

**LETTER OF TRANSMITTAL FORM**

## ***APPENDIX E***

### ***Letter of Transmittal Form***

**RFP#:** \_\_\_\_\_

**Offeror Name:** \_\_\_\_\_

Items #1 to #7 EACH MUST BE COMPLETED IN FULL Failure to respond to all seven items WILL RESULT IN THE DISQUALIFICATION OF THE PROPOSAL!

**1. Identity (Name) and Mailing Address** of the submitting organization:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**2. For the person authorized by the organization to contractually obligate on behalf of this Offer:**

Name \_\_\_\_\_  
Title \_\_\_\_\_  
E-Mail Address \_\_\_\_\_  
Telephone Number \_\_\_\_\_

**3. For the person authorized by the organization to negotiate on behalf of this Offer:**

Name \_\_\_\_\_  
Title \_\_\_\_\_  
E-Mail Address \_\_\_\_\_  
Telephone Number \_\_\_\_\_

**4. For the person authorized by the organization to clarify/respond to queries regarding this Offer:**

Name \_\_\_\_\_  
Title \_\_\_\_\_  
E-Mail Address \_\_\_\_\_  
Telephone Number \_\_\_\_\_

**5. Use of Sub-Contractors (Select one)**

\_\_\_\_ No sub-contractors will be used in the performance of any resultant contract OR  
\_\_\_\_ The following sub-contractors will be used in the performance of any resultant contract:

\_\_\_\_\_  
(Attach extra sheets, as needed)

**6. Please describe any relationship with any entity (other than Subcontractors listed in (5) above) which will be used in the performance of any resultant contract.**

\_\_\_\_\_  
(Attach extra sheets, as needed)

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

\_\_\_\_\_, 2023  
Authorized Signature and Date (Must be signed by the person identified in item #2, above.)

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**APPENDIX G**  
**COST RESPONSE FORM**

## COST RESPONSE FORM

Offerors must fill out this form and submit it along with the proposal. It is encouraged for Offerors to submit discounted pricing.

Deviations of the Cost Response form are NOT permitted. Additional lines will not count in the evaluation. Nor will additional cost lines become a part of the resulting contract in the event the Offeror should be awarded.

	Cost per hour				
	2024 (Partial Year)	2025	2026	2027	2028 (Partial Year)
Attorney/Shareholder					
Associate (7+ years)					
Associate (3-6 Years)					
Associate (1-3 Years)					
Paralegal					
Law Clerk					

### Reimbursement of Indirect Costs and Travel

- Filing fees, service and statutory fees shall be charged at actual rates charged by court, process server or administrative agency.
- Computerized legal research (e.g., LEXIS, WESTLAW and other computerized legal research) shall be charged at the actual rate charged to Contractor for computer time, number of pages printed, number of searches, etc.
- Long distance telephone calls shall be charged at actual cost.
- Photocopies shall be charged at \$0.05 per page. For large copying projects where confidentiality is not paramount, services of an outside copying service may be used and charges billed at actual cost.
- Postage for mailings which cost more than \$1.00 (e.g., Federal Express or similar express mail delivery charges and multiple mailings) shall be charged at actual cost.

- Miscellaneous (e.g. special supplies) shall be charged at actual cost.
- The Department shall reimburse the Contractor at actual reasonable costs for travel expenses related to the performance of this contract. Travel expenses will be limited to economy class airfare, car rental, lodging and meals.

Reimbursement for indirect costs and travel expenses as stated above will only be paid to the Contractor upon submission, and approval by the Department, of original invoices. Time devoted by Contractor to prepare billings and explain billing charges to Department shall not be billed by Contractor.