

**NEW MEXICO DEPARTMENT OF JUSTICE**

**REQUEST FOR PROPOSALS (RFP)**

**CIVIL RIGHTS LEGAL SERVICES**



**RFP# 305-2024-0000002**

RFP Release Date: March 26, 2024

Proposal Due Date: April 29, 2024

**ELECTRONIC-ONLY PROPOSAL SUBMISSION**

# Table of Contents

<b>I. INTRODUCTION.....</b>	<b>1</b>
A.    PURPOSE OF THIS REQUEST FOR PROPOSALS .....	1
B.    BACKGROUND INFORMATION.....	1
C.    SCOPE OF PROCUREMENT.....	1
D.    PROCUREMENT MANAGER.....	1
E.    PROPOSAL SUBMISSION .....	2
F.    DEFINITION OF TERMINOLOGY.....	2
<b>II. CONDITIONS GOVERNING THE PROCUREMENT .....</b>	<b>6</b>
A.    SEQUENCE OF EVENTS.....	6
B.    EXPLANATION OF EVENTS .....	6
1.    Issue RFP.....	6
2.    Acknowledgement of Receipt Form.....	6
3.    Pre-Proposal Conference .....	7
4.    Deadline to Submit Written Questions .....	7
5.    Response to Written Questions .....	7
6.    Submission of Proposal.....	7
7.    Proposal Evaluation.....	8
8.    Selection of Finalist(s).....	8
9.    Oral Presentation(s).....	8
11.   Award(s) .....	8
12.   Protest Deadline .....	9
C.    GENERAL REQUIREMENTS.....	9
1.    Acceptance of Conditions Governing the Procurement.....	9
2.    Incurring Cost.....	9
3.    Prime Contractor Responsibility .....	9
4.    Subcontractors/Consent .....	9
5.    Amended Proposals.....	10
6.    Offeror’s Rights to Withdraw Proposal.....	10
7.    Disclosure of Proposal Contents .....	10
8.    No Obligation.....	10
9.    Termination .....	11
10.   Sufficient Appropriation.....	11
11.   Legal Review .....	11
12.   Governing Law.....	11
13.   Basis for Proposal .....	11
14.   Contract Terms and Conditions .....	11
15.   Offeror’s Terms and Conditions.....	12
16.   Contract Deviations .....	12
17.   Offeror Qualifications .....	12
18.   Right to Waive Minor Irregularities.....	12
19.   Change in Contractor Representatives .....	12
20.   Notice of Penalties.....	13
21.   Agency Rights .....	13
22.   Right to Publish.....	13
23.   Ownership of Proposals.....	13
24.   Confidentiality .....	13
25.   Electronic mail address required .....	13
26.   Use of Electronic Versions of this RFP.....	13
27.   New Mexico Employees Health Coverage .....	13

28. Campaign Contribution Disclosure Form .....	14
29. Letter of Transmittal.....	14
30. Disclosure Regarding Responsibility .....	15
31. New Mexico/Native American Resident Preferences .....	16
<b>III. RESPONSE FORMAT AND ORGANIZATION .....</b>	<b>17</b>
A. NUMBER OF RESPONSES .....	17
B. PROPOSAL CONTENT AND ORGANIZATION.....	17
<b>IV. SPECIFICATIONS.....</b>	<b>18</b>
A. DETAILED SCOPE OF WORK .....	18
THE SUCCESSFUL LAW FIRM SHALL GIVE TIMELY WRITTEN NOTICE TO THE NMDOJ ON ANY AND ALL PLEADINGS, DISPOSITIVE MOTIONS, RULINGS, HEARINGS, TRIALS, MEDIATIONS OR SETTLEMENT NEGOTIATIONS, APPEARS, OR NOTICES OF APPEALS AND ANY OTHER LEGAL EVENTS RELEVANT TO THE MATTER CONTAINED IN THIS RFP. THE SUCCESSFUL LAW FIRM SHALL MEET, COORDINATE WITH AND SUBMIT INTERIM REPORTS TO THE NMDOJ ON A BASIS TO BE DETERMINED BY THE NMDOJ, BUT NOT LESS THAN MONTHLY, AND SHALL INCLUDE A DESCRIPTION OF EACH MATTER ASSIGNED, THE PARTICULAR CASE INVOLVED, ITS CURRENT STATUS, ANY SIGNIFICANT EVENTS THAT HAVE TRANSPIRED IN THE PERIOD SINCE THE LAST STATUS REPORT AND PROSPECTIVE ANALYSIS OF ANY SIGNIFICANT FUTURE EVENTS. ....	18
B. TECHNICAL SPECIFICATIONS.....	18
1. Organizational Experience (300 points available) .....	19
2. Organizational References (200 points available).....	20
3. Mandatory Specification (300 points available).....	21
C. BUSINESS SPECIFICATIONS .....	22
1. Financial Stability (200 points available).....	22
2. Letter of Transmittal Form.....	22
3. Campaign Contribution Disclosure Form .....	23
4. Oral Presentation.....	23
5. New Mexico/Native American Resident Preferences .....	23
<b>V. EVALUATION.....</b>	<b>23</b>
A. EVALUATION POINT SUMMARY .....	23
B. EVALUATION FACTORS .....	24
B.1 Organizational Experience (See Table 1).....	24
B. 2. Organizational References (See Table ).....	24
B.3 Mandatory Specifications (See Table 1).....	24
C.1 Financial Stability (See Table 1).....	24
C.2 Letter of Transmittal (See Table 1).....	25
C.3 Campaign Contribution Disclosure Form (See Table 1).....	25
C.4 Oral Presentation (See Table 1).....	25
C.5. New Mexico/Native American Resident Preferences.....	25
C. EVALUATION PROCESS .....	25
<b>APPENDIX A.....</b>	<b>26</b>
<b>ACKNOWLEDGEMENT OF RECEIPT FORM .....</b>	<b>26</b>
<b>APPENDIX B .....</b>	<b>28</b>
<b>CAMPAIGN CONTRIBUTION DISCLOSURE FORM.....</b>	<b>29</b>
<b>APPENDIX C .....</b>	<b>32</b>
<b>DRAFT CONTRACT.....</b>	<b>32</b>
<b>APPENDIX D.....</b>	<b>43</b>
<b>LETTER OF TRANSMITTAL FORM .....</b>	<b>43</b>

<b>APPENDIX E .....</b>	<b>45</b>
<b>ORGANIZATIONAL REFERENCE QUESTIONNAIRE .....</b>	<b>45</b>

# **I. INTRODUCTION**

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

The purpose of the Request for Proposal (RFP) is to solicit sealed proposals for the procurement of outside legal services for the State of New Mexico through the New Mexico Department of Justice (NMDOJ) to meet the NMDOJ's broad range of affirmative, defensive, and policy-based civil rights legal needs on an "as needed/if needed" basis.

Once the NMDOJ has decided that pursuing certain litigation is in the best interest of the State, Offerors who have been selected on an "as needed/if needed" basis for the relevant legal services contained in this RFP will be awarded outside counsel contracts for a term of up to four years. These contractors will work closely with senior staff or other designated staff in the NMDOJ. The NMDOJ staff shall review and monitor legal strategies employed and shall collaborate with outside counsel where appropriate to achieve early resolution of matters through motion practice or alternative dispute resolution mechanisms. Outside Counsel shall keep NMDOJ staff timely informed and involved during all litigation stages, including dates of settlement conferences, mediations and arbitrations, and hearing dates on all dispositive motions.

## **B. BACKGROUND INFORMATION**

The NMDOJ is issuing the RFP to procure outside legal services on an "as needed/if needed" basis to meet its obligations to protect the public interest and public property and otherwise meet its statutory obligations. Pursuant to NMSA 1978, Section 8-5-2, the New Mexico Attorney General shall prosecute and defend in court all actions and proceedings, civil or criminal, in which the state may be a party or interested when, in his judgment, the interest of the state requires such action. The NMDOJ will review available resources and expertise within the agency and will pursue representation by outside counsel only if it is cost-effective for the State and pertinent subject matter expertise is demonstrated. Outside counsel utilized for the litigation described in this RFP will be those Offerors who have successfully responded to the RFP.

## **C. SCOPE OF PROCUREMENT**

The scope of procurement is to procure professional legal services for the State of New Mexico through the NMDOJ to meet the NMDOJ's broad range of affirmative, defensive, and policy-based civil rights legal needs on an "as needed/if needed" basis. The scope of this RFP or procurement is for professional services only and may ONLY be used by the awarded Offeror and the NMDOJ exclusively.

## **D. PROCUREMENT MANAGER**

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

Name: Melissa Spangler, Procurement Manager  
Telephone: (505) 795-0216  
Email: mspangler@nmdoj.gov

1. **Any inquiries or requests** regarding this procurement should be submitted, in writing, to the Procurement Manager. Offerors may contact **ONLY** the Procurement Manager regarding this procurement. Other state employees or Evaluation Committee members do not have the authority to respond.
2. **Protests of the solicitation or award must be submitted in writing to the Protest Manager identified in Section II.B.13.** As a Protest Manager has been named in this Request for Proposals, pursuant to §13-1-172 NMSA 1978 and 1.4.1.82 NMAC, **ONLY** protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. Protests submitted or delivered to the Procurement Manager will **NOT** be considered properly submitted.

#### **E. PROPOSAL SUBMISSION**

*Submissions of all proposals must be emailed to procurement manager at the email provide above in Section I.D.*

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

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

1. “**Agency**” means the New Mexico Department of Justice
2. “**Award**” means the final execution of the contract document.
3. “**Business Hours**” means weekdays (Monday – Friday) 8:00 AM thru 5:00 PM MST/MDT, whichever is in effect on the date given.
4. “**Close of Business**” means weekdays (Monday – Friday) 5:00 PM MST/MDT, whichever is in effect on the date given.
5. “**Confidential**” means confidential financial information concerning Offeror’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act §§57-3-A-1 through 57-3A-7 NMSA 1978,. See also NMAC 1.4.1.45. The following items may **not** be labelled as confidential: Staff/Personnel Resumes/Bios (excluding personal information such as personal telephone numbers and/or home addresses), and other submitted data that is **not** confidential financial information or that qualifies under the Uniform Trade Secrets Act.

6. “**Contract**” means any agreement for the procurement of items of tangible personal property, services or construction.
7. “**Contractor**” means any business having a contract with a state agency or local public body.
8. “**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.
9. “**Desirable**” – the terms “may,” “can,” “should,” “preferably,” or “prefers” identify a desirable or discretionary item or factor.
10. “**Electronic Submission**” means a successful submittal of Offeror’s proposal to the Procurement Manager.
11. “**Electronic Version/Copy**” means a digital format consisting of text, images or both, readable on computers or other electronic devices, which includes all content that the Original document contains.
12. “**Evaluation Committee**” means a body appointed to perform the evaluation of Offerors’ proposals.
13. “**Evaluation Committee Report**” means a report prepared by the Procurement Manager and the Evaluation Committee to support the Committee’s recommendation for contract award. It will contain scores and written evaluations of all responsive Offeror proposals.
14. “**Final Award**” means, in the context of this Request for Proposals and all its attendant documents, that point at which the final required signature on the contract(s) resulting from the procurement has been affixed to the contract(s) thus making it fully executed.
15. “**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, as explained in Section II.B.7.
16. “**Key Personnel**” means those personnel determined by the Offeror or otherwise determined by the Agency during the course of the RFP process as necessary personnel whose expertise is required to complete the work under the contract.
17. “**Mandatory**” – the terms “must,” “shall” “will,” “is required,” or “are required,” identify a mandatory item or factor. Failure to meet a mandatory item or factor may result in the rejection of the Offeror’s proposal.
18. “**Minor Irregularities**” means anything in the proposal that does not affect the price, quality and/or quantity, or any other mandatory requirement.

19. “**Offeror**” is any person, corporation, or partnership who chooses to submit a proposal.
20. “**Procurement Manager**” means any person or designee authorized by a state agency or local public body with the responsibility, authority, and resources to conduct the RFP procurement, make written determinations regarding the RFP procurement, and/or enter into or administer contracts as a result of the RFP procurement.
21. “**Procuring Agency**” means all State of New Mexico agencies, commissions, institutions, political subdivisions, and local public bodies allowed by law to entertain procurements.
22. “**Redacted**” means a version/copy of the Offeror’s proposal with the information considered proprietary or confidential (as defined by §§57-3A-1 to 57-3A-7 NMSA 1978 and NMAC 1.4.1.45 and summarized herein and outlined in Section II.C.7 of this RFP) blacked-out BUT NOT omitted or removed.
23. “**Request for Proposals (RFP)**” means all documents, including those attached or incorporated by reference, used for soliciting proposals.
24. “**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 this proposal.
25. “**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.
26. “**Sealed**” means, in terms of electronic submission, an Offeror’s proposal and all accompanying documents has been completely and successfully submitted prior to the submission deadline stated in the RFP.
27. “**Staff**” means any individual who is a full-time, part-time, or an independently contracted employee with the Offerors’ company.
28. “**State (the State)**” means the State of New Mexico.
29. “**State Agency**” means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of this state.
30. “**Statement of Concurrence**” means an affirmative statement from the Offeror indicating its response to a required Section IV specification agreeing to comply and concur with the stated requirement(s). This statement shall be included in Offerors proposal, pursuant to Section III.C.1. (E.g. “We concur,” “Understands and Complies,” “Comply,” “Will Comply if Applicable,” etc.)



31. **“Unredacted”** means a version/copy of the proposal containing all complete information; including any that the Offeror would otherwise consider confidential, such copy for use only for the purposes of evaluation.
32. **“Written”** means typed in standard 8 ½ x 11 inch document format, by common electronic means (such as Microsoft Word, Adobe PDF, etc.). A larger size document is permissible for charts, spreadsheets, etc.

## II. CONDITIONS GOVERNING THE PROCUREMENT

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

### A. SEQUENCE OF EVENTS

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

Action	Responsible Party	Due Dates
1. Issue RFP	NMDOJ	March 26, 2024
2. Acknowledgement of Receipt Form	Potential Offerors	April 8, 2024
3. Pre-proposal Conference	NMDOJ	April 9, 2024
4. Deadline to submit Written Questions	Potential Offerors	April 11, 2024
5. Response to Written Questions	Procurement Manager	April 19, 2024
<b>6. <i>Submission of Proposal</i></b>	<b><i>Potential Offerors</i></b>	<b><i>April 29, 2024</i></b>
7.* Proposal Evaluation	Evaluation Committee	April 30, 2024 – May 10, 2024
8.* Selection of Finalist(s)	Evaluation Committee	May 6, 2024
9.* Oral Presentation(s)	Finalist Offerors	May 7, 2024
10.* Finalize Contractual Documents	Agency/Finalist Offerors	May 8 - 13, 2024
11.* Award(s)	Agency/Finalist Offerors	May 17, 2024
12.* Protest Deadline	NMDOJ/Offerors	June 1, 2024

\* Dates indicated in Events 6 through 11 are estimates only and may be subject to change without necessitating an amendment to the RFP.

### B. EXPLANATION OF EVENTS

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

#### 1. Issue RFP

This RFP is being issued on behalf of the New Mexico Department of Justice on the date indicated in Section II.A, Sequence of Events.

#### 2. Acknowledgement of Receipt Form

Potential Offerors may e-mail the Acknowledgement of Receipt Form (APPENDIX A), to the Procurement Manager at [mspanglar@nmdoj.gov](mailto:mspanglar@nmdoj.gov), to have their organization placed on

the procurement Distribution List. The form must be returned to the Procurement Manager by 3:00 pm MST/ MDT on the date indicated in Section II.A, Sequence of Events

The procurement distribution list will be used for the distribution of written responses to questions, and/or any amendments to the RFP. Failure to return the Acknowledgement of Receipt Form does not prohibit potential Offerors from submitting a response to this RFP. However, by not returning the Acknowledgement of Receipt Form, the potential Offeror's representative shall not be included on the distribution list.

### **3. Pre-Proposal Conference**

A pre-proposal conference will be held as indicated in Section II.A, Sequence of Events, beginning at 11:00 am MST/MDT via Microsoft Teams. [Pre-proposal Conference](#)

**Potential Offeror(s) are encouraged to submit written questions in advance of the conference to the Procurement Manager** (see Section I.D). The identity of the organization submitting the question(s) will not be revealed. Additional written questions may be submitted at the conference. All questions answered during the Pre-Proposal Conference will be considered **unofficial** until they are posted in writing. All written questions will be addressed in writing on the date listed in Section II.A, Sequence of Events. A public log will be kept of the names of potential Offeror(s) that attended the pre-proposal conference.

Attendance at the pre-proposal conference is highly recommended, but not a prerequisite for submission of a proposal.

### **4. Deadline to Submit Written Questions**

Potential Offerors may submit written questions to the Procurement Manager as to the intent or clarity of this RFP until 3:00 pm MST/MDT as indicated in Section II.A, Sequence of Events. All written questions must be addressed to the Procurement Manager as declared in Section I.D. Questions shall be clearly labeled and shall cite the Section(s) in the RFP or other document which form the basis of the question.

### **5. Response to Written Questions**

Written responses to the written questions will be provided via e-mail, on or before the date indicated in Section II.A, Sequence of Events, to all potential Offerors who timely submitted an Acknowledgement of Receipt Form (Section II.B.2 and APPENDIX A). The Procurement Manager will not email potential Offerors if there are no written questions.

### **6. Submission of Proposal**

At this time, only **electronic** proposal submission is allowed. **Do not** submit hard copies until further notice.

**ALL PROPOSALS MUST BE RECEIVED BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 12:00 PM MST/MDT ON THE DATE INDICATED IN**

**SECTION II.A, SEQUENCE OF EVENTS. NO LATE PROPOSAL CAN BE ACCEPTED.**

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

**7. Proposal Evaluation**

An Evaluation Committee will perform the evaluation of proposals. This process will take place as indicated in Section II.A, Sequence of Events, depending upon the number of proposals received. During this time, the Procurement Manager may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals. However, proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors.

**8. Selection of Finalist(s)**

The Evaluation Committee will select, and the Procurement Manager will notify the finalist Offerors as per schedule Section II.A, Sequence of Events or as soon as possible thereafter.

**9. Oral Presentation(s)**

Finalist Offerors, as selected per Section II.B.8 above, may be required to conduct an oral presentation at a venue to be determined as per schedule Section II.A., Sequence of Events, or as soon as possible thereafter. If Oral Presentations are held, Finalist Offerors may be required to make their presentations through electronic means (Microsoft Teams). The Agency will provide Finalist Offerors with an agenda and applicable details; including an invitation to the event. Whether or not Oral Presentations will be held is at the sole discretion of the Evaluation Committee.

**10. Finalize Contractual Documents**

After approval of the Evaluation Committee Report, any contractual documents resulting from this RFP will be finalized with the most advantageous Offeror(s), taking into consideration the evaluation factors set forth in this RFP, as per Section II.A., Sequence of Events, or as soon as possible thereafter. The most advantageous proposal may or may not have received the most points. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror(s) in the timeframe specified, the State reserves the right to finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process.

**11. Award(s)**

Upon receipt of the signed contractual documents, the Agency Procurement office will award as per Section II.A., Sequence of Events, or as soon as possible thereafter. The award is subject to appropriate NMDOJ approval.

## **12. Protest Deadline**

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

Billy Jimenez, Protest Manager  
bjimenez@nmdoj.gov

**PROTESTS RECEIVED AFTER THE DEADLINE WILL NOT BE ACCEPTED.**

## **C. GENERAL REQUIREMENTS**

### **1. Acceptance of Conditions Governing the Procurement**

Offerors must indicate their acceptance to be bound by the Conditions Governing the Procurement, Section II.C, and Evaluation, Section V, by completing and signing the Letter of Transmittal form, pursuant to the requirements in Section II.C.29, located in APPENDIX D.

### **2. Incurring Cost**

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

### **3. Prime Contractor Responsibility**

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

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

The use of subcontractors is allowed. The prime contractor shall be wholly responsible for the entire performance of the contractual agreement whether or not subcontractors are used. Additionally, the prime contractor must receive approval, in writing, from the

agency awarding any resultant contract, before any subcontractor is used during the term of this agreement.

## 5. Amended Proposals

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

## 6. Offeror's Rights to Withdraw Proposal

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request addressed to the Procurement Manager and signed by the Offeror's duly authorized representative.

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

## 7. Disclosure of Proposal Contents

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

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

If a request is received for disclosure of proprietary or confidential materials, the Agency shall examine the request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of proprietary or confidential information.

## 8. 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.

## **9. 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.

## **10. Sufficient Appropriation**

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

## **11. Legal Review**

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

## **12. 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.

## **13. Basis for Proposal**

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

## **14. Contract Terms and Conditions**

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

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

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

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

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

#### **15. Offeror's Terms and Conditions**

Offerors must submit with the proposal a complete set of any additional terms and conditions they expect to have included in a contract negotiated with the Agency. See Section II.C.14 for requirements.

#### **16. Contract Deviations**

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

#### **17. Offeror Qualifications**

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

#### **18. Right to Waive Minor Irregularities**

The Evaluation Committee reserves the right to waive minor irregularities, as defined in Section I.F.18. 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.

#### **19. Change in Contractor Representatives**

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



## **20. Notice of Penalties**

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

## **21. 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.

## **22. 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.

## **23. Ownership of Proposals**

All documents submitted in response to the RFP shall become property of the State of New Mexico. If the RFP is cancelled, all responses received shall be destroyed by the Agency.

## **24. Confidentiality**

Any confidential information provided to, or developed by, the contractor in the performance of the contract resulting from this RFP shall be kept confidential and shall not be made available to any individual or organization by the contractor without the prior written approval of the Agency.

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

## **25. 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.4 Response to Written Questions).

## **26. Use of Electronic Versions of this RFP**

This RFP is being made available by electronic means. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the agency, the Offeror acknowledges that the version maintained by the agency shall govern.

## **27. New Mexico Employees Health Coverage**

A. If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Offeror must agree to have in place, and agree to

maintain for the term of the contract, health insurance for those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

- B. Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.
- C. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <https://bewellnm.com>.

## 28. Campaign Contribution Disclosure Form

Offeror must complete, sign, and return the Campaign Contribution Disclosure Form (APPENDIX B) as a part of their proposal. This requirement applies regardless whether a covered contribution was made or not made for the position of Attorney General. **Failure to complete and return the signed, unaltered form will result in Offeror's disqualification.**

## 29. Letter of Transmittal

Offeror's proposal must be accompanied by a Letter of Transmittal Form (APPENDIX D), which must be **signed** by the individual authorized to contractually obligate the company, identified in #2 below.

Provide the following information:

1. Identify the submitting business entity; Name, Mailing Address, Phone Number, Federal Tax ID Number (TIN), and New Mexico Business Tax ID Number(BTIN, formerly CRS);
2. Identify the Name, Title, Telephone, and E-mail address of the person authorized by the Offeror's organization to (A) contractually obligate the business entity providing the Offer, (B) negotiate a contract on behalf of the organization; and/or (C) provide clarifications or answer questions regarding the Offeror's proposal content (*A response to B and/or C is only necessary if the responses differs from the individual identified in A*);
3. Identify any subcontractor/s that may be utilized in the performance of any resultant contract award;
4. Identify any other entity/-ies (such as State Agency, reseller, etc., that is not a subcontractor identified in #3) that may be used in the performance of this awarded contract; and
5. The individual identified in #2 above, must sign and date the form, attesting to the veracity of the information provided, and acknowledging (a) the organization's acceptance of the Conditions Governing the Procurement stated in Section II.C.1, (b) the organizations acceptance of the Section V Evaluation Factors, and (c) receipt of any and all amendments to the RFP.

**Failure to submit a signed Letter of Transmittal Form (Appendix D) will result in Offeror's disqualification.**

**30. Disclosure Regarding Responsibility**

- A. All Offerors agree to disclose whether the Offeror, or any principal of the Offeror's company:
1. is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body;
  2. has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:
    - a. the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract;
    - b. violation of Federal or state antitrust statutes related to the submission of offers; or
    - c. the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property;
  3. is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure;
  4. has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.
    - a. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
    - b. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
    - c. Have within a three-year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body.)
- B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.
- C. The Offeror shall provide immediate written notice to the Chief Procurement Officer if, at any time during the term of this RFP, the Offeror learns that the Offeror's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.
- D. A disclosure that any of the items in this requirement exist will not necessarily result in

termination of this Offeror. However, the disclosure will be considered in the determination of the Offeror's responsibility and ability to perform under this RFP. 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 a 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 during the term of this RFP. If during the performance of the contract, the Offeror 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 Offeror must provide immediate written notice to the Chief Procurement Officer. If it is later determined that the Offeror knowingly rendered an erroneous disclosure, in addition to other remedies available to the Chief Procurement Officer may terminate the involved contract for cause.

### **31. New Mexico/Native American Resident Preferences**

To ensure adequate consideration and application of §13-1-21 NMSA 1978 (as amended), **Offeror must submit a copy of its valid New Mexico/Native American Resident Preference Certificate or its valid New Mexico/Native American Resident Veteran Preference with its proposal.** Certificates for preferences must be obtained through the New Mexico Department of Taxation & Revenue  
<http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx>.

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

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

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

#### **ELECTRONIC SUBMISSION**

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

##### **1. Technical Proposal –**

- a. **Confidential Information**: If Offeror’s proposal contains confidential information, as defined in Section I.F.5 and detailed in Section II.C.7, Offeror **must** submit **two (2) separate ELECTRONIC technical files** :
  - i. One (1) ELECTRONIC version of the requisite proposals identified in Section III.B.2, above, as an **unredacted** (Section I.F.31) version for evaluation purposes; **and**
  - ii. One (1) **redacted** (def. Section I.F.26) ELECTRONIC for the public file, in order to facilitate eventual public inspection of the non-confidential version of Offeror’s proposal. Redacted versions **must** be clearly marked as “REDACTED” or “CONFIDENTIAL” on the first page of the electronic file;

#### **B. PROPOSAL CONTENT AND ORGANIZATION**

All proposals must be submitted as follows:

Direct reference to pre-prepared or promotional material may be used if referenced and clearly marked. Promotional material must be minimal. Within each section of the proposal, Offerors must organize and address the RFP requirements in the order indicated below. All forms provided in this RFP must be thoroughly completed and included in the appropriate section of Offeror’s proposal.

##### **Technical Proposal –**

1. Signed Letter of Transmittal
2. Signed Campaign Contribution Form
3. Table of Contents
4. Proposal Summary
5. Response to Contract Terms and Conditions (from Section II.C.14)
6. Offeror’s Terms and Conditions (from Section II.C.15 )

7. Response to Specifications
  - a. Organizational Experience
  - b. Organizational References
  - c. Oral Presentation (if applicable)
  - d. Mandatory Specification
  - e. Financial Stability (Financial information considered confidential, as defined in Section I.F.5 and detailed in Section II.C.7, should be placed in the **Confidential Information** file as applicable)
  - f. New Mexico/Native American Resident Preferences (if applicable)
8. Other Supporting Material (if applicable)

## **IV. SPECIFICATIONS**

### **A. DETAILED SCOPE OF WORK**

The NMDOJ is issuing the RFP to procure outside legal services on an “as needed/if needed” basis to meet its obligations to protect the public interest and public property and otherwise meet its statutory obligations. NMSA 1978, Section 8-5-2, the New Mexico Attorney General (AG) shall prosecute and defend in court all actions and proceedings, civil or criminal, in which the state may be a party or interested when, in his judgment, the interest of the state requires such action. The NMDOJ will review available resources and expertise within the agency and will pursue representation by outside counsel if it is cost-effective for the State and pertinent subject matter expertise is demonstrated in a broad range of affirmative, defensive, and policy-based civil rights legal needs. Once the NMDOJ has decided that pursuing certain litigation is in the best interest of the State, offerors who have been selected on an “as needed/if needed” basis for the relevant legal services contained in this RFP will be awarded outside counsel contracts.

The NMDOJ will maintain complete control over the decision to undertake litigation and over the course and conduct of all litigation undertaken through outside counsel, including filing suit, approval of pleadings, and ultimate authority over settlement and major decisions related to litigation strategy. The NMDOJ will appoint senior or other staff to oversee the course and conduct of all litigation undertaken through outside counsel. Outside counsel will consult and collaborate with designated staff immediately on all representation matters that may be significant, controversial, or otherwise noteworthy.

The successful law firm shall give timely written notice to the NMDOJ on any and all pleadings, dispositive motions, rulings, hearings, trials, mediations or settlement negotiations, appeals, or notices of appeals and any other legal events relevant to the matter contained in this RFP. The successful law firm shall meet, coordinate with and submit interim reports to the NMDOJ on a basis to be determined by the NMDOJ, but not less than monthly, and shall include a description of each matter assigned, the particular case involved, its current status, any significant events that have transpired in the period since the last status report and prospective analysis of any significant future events.

### **B. TECHNICAL SPECIFICATIONS**

## 1. Organizational Experience (300 points available)

Offeror **must** provide a response which includes:

- a) provide a description of relevant experience with government and private sector clients. The narrative must thoroughly describe how the Offeror has supplied expertise for similar contracts and must include the extent of their experience, expertise and knowledge as a provider of legal services, including the provision of legal services to governmental entities. Please do not provide extensive or uninformative case lists. The NMDOJ retains the right to request additional information demonstrating the requisite experience;
- b) indicate the approximate number of cases in which the Offeror has represented governmental entities in litigation and other matters within the past six years;
- c) identify all persons who will be assigned by the Offeror to perform the procured legal services, including dates of licensure and bar admission for each attorney, and a summary of the attorney or attorneys' educational background, training, professional distinctions, awards and memberships in any professional legal organizations. A statement should be provided for each attorney is a member in good standing in each jurisdiction they are licensed.
- d) The Offeror's firm's history including the year the firm was organized and the year the firm began its practice in the relevant practice area;
- e) Ownership of the firm, including but not limited to:
  1. ownership structure; and
  2. affiliated companies or joint ventures;
- f) An organizational chart diagramming the relationship between the professional staff as well as the parent, subsidiary, affiliate, or joint venture entities;
- g) Any material developments in your organization (changes in ownership, personnel business, etc.) over the past three years and any potential material developments in the near future;
- h) A list of the law firm's office locations and the number of staff located in each office;
- i) A list of all legal services provided by your firm including specialized areas of expertise;
- j) Any malpractice claims against your law firm or any attorney in your firm within the last five years and the status or outcome of each claim;
- k) Any criminal or SEC investigations involving your law firm or any attorney in your firm and the status or outcomes of such investigations;
- l) Any ethics complaints against your law firm or any attorney in your firm within the last five years and the status of the outcome of each complaint;

- m) A copy of the law firm's malpractice insurance for every attorney who will provide outside legal services;
- n) The number of relevant legal services relevant to this RFP your firm currently handles on an annual basis;
- o) A list of all cases related to the relevant legal services contained in this RFP (identifying by case name and proper legal citation) in which attorneys from your law firm have appeared, the extent of involvement from the attorneys in your law firm and the ultimate outcome of each case, if applicable;
- p) A statement whether your law firm is equipped to handle all relevant legal services contained in this RFP or whether you expect to assign certain aspects of the work to other law firms or attorneys not employed by your law firm; and
- q) Back-up plan in the event the key staff addressing the relevant legal services contained in this RFP should leave your law firm or be assigned to other cases or duties within the law firm.

## 2. Organizational References (200 points available)

Offeror must provide a list of a minimum of three (3) external references from organizations who the Offeror previously (within the last 6 years) or currently provides the services described in the RFP with preferably at least one reference being another Office of Attorney General/Department of Justice.

Offeror shall include the following Business Reference information as part of its proposals:

- a) Client name;
- b) Project description;
- c) Project dates (starting and ending);
- d) Key personnel assigned to reference case that will be designated for work per this RFP; and
- e) Client project manager name, telephone number, fax number and e-mail address.

Offeror is required to submit APPENDIX E, Organizational Reference Questionnaire ("Questionnaire"), to the business references it lists. **The business references must submit the Questionnaire directly to the designee identified in APPENDIX E. The business references must not return the completed Questionnaire to the Offeror.** It is the Offeror's responsibility to ensure the completed forms are submitted on or before the date indicated in Section II.A, Sequence of Events, for inclusion in the evaluation process.

Organizational References that are not received or are not complete, may adversely affect the Offeror's score in the evaluation process. Offerors are encouraged to specifically request that their Organizational References provide detailed comments.



### **3. Mandatory Specification (300 points available)**

Offerors **must** provide a response which includes:

- a) An overview of the methodology used to determine which staff will be assigned to the relevant legal services contained in this RFP. Attorneys and law firms submitting offers must have Principals/Owners/Directors/Partners with at least five (5) years' general civil litigation experience;
- b) An overview of the law firm's strategic approach to the relevant legal services contained in this RFP;
- c) A description of the law firm's method to maintaining responsive communications with the NMDOJ regarding the relevant legal services contained in this RFP. The communications include but are not limited to, discussions on strategy, mentorship opportunities, collaboration on motion and deposition practice;
- d) A description of the law firm's approach to ensuring timely communication with the NMDOJ on a matter that may be significant, controversial, or otherwise noteworthy as it relates to the relevant legal services contained in this RFP;
- e) A description of the law firm's process to ensure it is adhering to all applicable state and federal laws regarding access to and retention of records, along with all ethical and professional standards; and
- f) All Offerors must have active general and premises liability insurance at the minimum required limits of the New Mexico Tort Claims Act (although higher limits are desirable). All Offerors shall provide proof of general and premises liability insurance.
- g) Assignment to represent the NMDOJ is contingent upon the ability of the Offeror to obtain the designation of Special Assistant Attorney General from the NMDOJ for purposes of the litigation.
- h) In determining reasonable attorney fees and costs, Offerors shall agree to comply with the following limitations:
  - i. The NMDOJ generally requires that only one attorney attend meetings, conferences, depositions, hearings, trials, and other events, unless otherwise pre-approved by the NMDOJ contact person. Without such prior approval, the NMDOJ will only support compensation for the attendance of only one attorney at any event.
  - ii. The NMDOJ will not support unnecessary or unapproved trial preparation (considering imminence of trial, complexity of case, and likelihood of trial).
  - iii. The NMDOJ will not support compensation for time spent researching issues common to civil practice in New Mexico.
  - iv. The NMDOJ will not support compensation for marketing.
  - v. The NMDOJ will not support compensation for costs once a matter is closed or terminated.
  - vi. The following clerical and administrative costs are also not reimbursable:

1. Time spent on electronic filing of pleadings, routine copying, faxing, filing or retrieving from files, organization or indexing of pleadings, correspondence or other documents the Offeror prepares or receive.
2. Time spent on initial review, listing or copying of incoming mail to determine appropriate routing, filing, etc.
3. Time spent on scheduling appointments, depositions, or meetings, including travel or court reporter arrangements.
4. Preparation and review of monthly billing statements.
5. Time associated with compliance to these practices and procedures or to any legal audit, either internal or external, of bills and expenses.
6. Maintenance of a calendar or tickler system.
7. The review of third-party billing statements.
8. Time associated with investigating conflicts.
9. Clerical time related to reviewing, opening or closing files.

i) Offeror shall disclose any past, existing, or potential conflicts of interest in the course of representing the NMDOJ. This disclosure should include both direct and indirect conflicts of interest and also include any positions Offeror has taken in the recent past, or is presently taking, on issues that may be adverse or harmful to the interests of the NMDOJ. The disclosure must include a description of any previous litigation against the State of New Mexico or any of its political subdivisions in which Offeror or members of Offerors firm have been involved in any capacity. Offerors must also include a list of matters in which the Offeror or members of the Offeror's firm made pre-litigation demands on behalf of a client against the State of New Mexico or its political subdivisions, if any. The Procurement Manager may request additional documentation limited to a specific description of how the Offeror proposes to overcome the conflict. If a contract is awarded to an Offeror pursuant to this RFP, and the NMDOJ later discovers a conflict of interest that was not previously disclosed as required herein, the contract may be terminated upon the date of such discovery on the basis of failure to satisfy a condition precedent.

## **C. BUSINESS SPECIFICATIONS**

### **1. Financial Stability (200 points available)**

Offerors shall submit verification of the ability to cover potential litigation. Verification will be determined by providing copies of the last three years' independent audit. If an independent audit was not conducted, copies of the offerors unaudited financial statements for the last three years. This should include the balance sheet, income statement and cash flow statement. In addition to this information, the Offeror may also submit other information (e.g. D&B report, tax returns, etc.) to enable the Evaluation Committee to assess the financial stability of the Offeror. Financial Information must be provided for every law firm submitting a proposal for this RFP. Failure to do so may result in Offeror's disqualification.

### **2. Letter of Transmittal Form**

The Offeror’s proposal **must** be accompanied by the Letter of Transmittal Form located in APPENDIX D. The form **must** be completed and must be signed by the person authorized to obligate the company. **Failure to submit a signed form will result in Offeror’s disqualification.**

### 3. Campaign Contribution Disclosure Form

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

### 4. Oral Presentation

If oral presentations are held, finalist Offeror(s) may be required to explain, demonstrate, detail, and/or clarify any aspect of its submitted proposal, to which the Evaluation Committee may ask questions and/or seek clarifications. Pursuant to Section II.B.9, Oral Presentation(s) may held at the sole discretion of the Evaluation Committee.

### 5. New Mexico/Native American Resident Preferences

To ensure application of § 13-1-21 NMSA 1978 (as amended), an Offeror **MUST** submit a copy, in this section, of its valid New Mexico/Native Resident Preference Certificate or its valid New Mexico/Native American Resident Veteran Preference Certificate, as issued by the New Mexico Taxation and Revenue Department.

## V. EVALUATION

### A. EVALUATION POINT SUMMARY

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

<b>Evaluation Factors</b> <i>(Correspond to Sections IV.B and IV.C)</i>	<b>Points Available</b>
<b>B. Technical Specifications (700 Total Points)</b>	
B. 1. Organizational Experience	300
B. 2. Organizational References	100
B. 3. Mandatory Specification	300
<b>C. Business Specifications (300 Total Points)</b>	
C.1. Financial Stability	200
C.2. Letter Of Transmittal	Pass/Fail

C.3. Campaign Contribution Disclosure Form	Pass/Fail
C.4. Oral Presentations	100
<b>TOTAL POINTS AVAILABLE</b>	<b>1,000</b>
C.5.A. New Mexico / Native American Resident Preference	<b>80</b>
C.5.B. New Mexico / Native American Resident Veteran Preference Points per Section IV C.7	<b>100</b>

Table 1: Evaluation Point Summary

## **B. EVALUATION FACTORS**

### **B.1 Organizational Experience (See Table 1)**

Points will be awarded based on the thoroughness and clarity of Offeror’s response in this Section.

### **B.2 Organizational References (See Table 1)**

Points will be awarded based upon an evaluation of the responses to a series of questions on the Organizational Reference Questionnaire (Appendix E). Offeror will be evaluated on references that show positive service history, successful execution of services and evidence of satisfaction by each reference. References indicating significantly similar services/scopes of work and comments provided by a submitted reference will add weight and value to a recommendation during the evaluation process. Points will be awarded for each individual response up to 1/3 of the total points for this category. Lack of a response will receive zero (0) points.

The Evaluation Committee may contact any or all business references for validation of information submitted. If this step is taken, the Procurement Manager and the Evaluation Committee must all be together on a conference call with the submitted reference so that the Procurement Manager and all members of the Evaluation Committee receive the same information. Additionally, the Agency reserves the right to consider any and all information available to it (outside of the Organizational Reference information required herein), in its evaluation of Offeror responsibility per Section II.C.17.

### **B.3 Mandatory Specifications (See Table 1)**

Points will be awarded based on the thoroughness and clarity of Offeror’s response in this Section.

#### **C.1 Financial Stability (See Table 1)**

Points will be awarded based on the thoroughness and clarity of Offeror’s response in this Section. Failure to provide this information may result in the Offeror’s disqualification.

## **C.2 Letter of Transmittal (See Table 1)**

Pass/Fail only. No points assigned.

## **C.3 Campaign Contribution Disclosure Form (See Table 1)**

Pass/Fail only. No points assigned.

## **C.4 Oral Presentation (See Table 1)**

Points will be awarded based on the quality, organization and effectiveness of communication of the information presented, as well as the professionalism of the presenters and technical knowledge of the proposed staff. Prior to Oral Presentation, Agency will provide the Offeror a presentation agenda. (If no Oral Presentations are held all Offerors will receive the maximum amount of total points for this Evaluation Factor).

## **C.5. New Mexico/Native American Resident Preferences**

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

### **A. New Mexico Resident Business Preference / Native American Resident Preference**

If an Offeror has provided a copy of its New Mexico Resident Preference Certificate or Native American Resident Preference Certificate, the points awarded will be calculated as 8% of the total points available in this RFP.

### **B. New Mexico/Native American Resident Veteran Preference**

If an Offeror has provided a copy of its New Mexico Resident Veteran Preference Certificate or Native American Resident Veteran Preference Certificate the points awarded will be calculated as 10% of the total points available in this RFP.

## **C. EVALUATION PROCESS**

1. All Offeror proposals will be reviewed for compliance with the requirements and specifications stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the Offeror for clarification of the response as specified in Section II. B.7.
3. Responsive proposals will be evaluated on the factors in Section IV, which have been assigned a point value in Section V. The responsible Offeror(s) with the highest scores may be selected as finalist Offeror(s), based upon the proposals submitted. In accordance with §13-1-117 NMSA 1978, the responsible Offeror(s) whose proposals are most advantageous to the State taking into consideration the Evaluation Factors in Section V will be recommended for award (as specified in Section II.B.11). 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

### CIVIL RIGHTS LEGAL SERVICES

RFP# 305-2024-0000002

## ACKNOWLEDGEMENT OF RECEIPT FORM

This Acknowledgement of Receipt Form establishes a distribution list to be used for the distribution of written responses to questions, and/or any amendments to the RFP. Failure to return the Acknowledgement of Receipt Form does not prohibit potential Offerors from submitting a response to this RFP. However, by not returning the Acknowledgement of Receipt Form, the potential Offeror's representative shall not be included on the distribution list, and will be solely responsible for obtaining responses to written questions and any amendments to the RFP.

The information below will be used for all correspondence related to the Request for Proposal. Only one contact per Offeror is permitted.

ORGANIZATION: \_\_\_\_\_

CONTACT NAME: \_\_\_\_\_

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

E-MAIL: \_\_\_\_\_

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

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

**Submit Acknowledgement of Receipt Form to:**

To: Melissa Spangler

E-mail: [mspanglers@nmdoj.gov](mailto:mspanglers@nmdoj.gov)

Subject Line: Civil Rights Legal Services and RFP#305-2024-0000002

**APPENDIX B**  
**CAMPAIGN CONTRIBUTION DISCLOSURE FORM**



**APPENDIX B**  
**CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

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

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

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

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

The following definitions apply:

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

**“Campaign Contribution”** means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions

on that official's behalf for the purpose of electing the official to statewide or local office.

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

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

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

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

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

Note: A prospective contractor shall make **separate** disclosures of all campaign contributions given by (1) the prospective contractor, or (2) a family member or (3) representative of the prospective contractor, or shall complete the non-disclosure statement, as applicable.

**DISCLOSURE OF CONTRIBUTIONS:**

<b>Contribution Made By:</b>			
<b>Relation to Prospective Contractor:</b>			
<b>Name of Applicable Public Official:</b>		Attorney General, Raul Torrez	
<b>Contribution(s) Date(s)</b>	<b>Contribution Amount(s):</b>	<b>Nature of Contribution(s):</b>	<b>Purpose of Contribution(s):</b>
	\$		
	\$		
	\$		
	\$		
	\$		

(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**

**DRAFT CONTRACT**

**STATE OF NEW MEXICO**

**DRAFT PROFESSIONAL SERVICES CONTRACT**

**NEW MEXICO OFFICE OF THE ATTORNEY GENERAL**

PROFESSIONAL SERVICES CONTRACT # \_\_\_\_\_

THIS AGREEMENT is made and entered into by and between the New Mexico Department of Justice, hereinafter referred to as the “Agency,” and \_\_\_\_\_, hereinafter referred to as the “Contractor,” and is effective as of the date set forth below upon which it is executed by the parties.

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 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.

C. Since there are costs associated with this Agreement, the Department of Finance and Administration's signature is required.

**(---OR---)**

A. The Agency shall permit the Contractor to petition the court for reasonable attorney's fees and costs as follows: the amounts shall not exceed 20% for any monetary recovery under \$50,000,000, 15% for any monetary recovery between \$50,000,001 and \$100,000,000, 10% for any monetary recovery between \$100,000,001 and \$250,000,000, and 5% for any monetary recovery over \$250,000,000. Other than in the event of termination, the Agency will provide assistance to the Contractor in requesting and obtaining from the court such attorney's fees and costs. Such assistance may include making personnel available for the purpose of preparing affidavits for, or giving testimony at, any hearing to determine such reasonable compensation, and endorsing pleadings requesting payment of such reasonable compensation.

B. Other than permitting the Contractor to petition the court for attorney's fees and costs, as described in Paragraph A, above, no other compensation shall be provided to the Contractor, including any compensation paid to the Contractor by the State of New Mexico or the Agency. Any damages awarded on behalf of the State of New Mexico, other than attorney's fees and costs, shall not be considered compensation to the Contractor and shall be returned to the Agency. In no event will the State of New Mexico or the Agency have any obligation to provide any attorney's fees, costs, reimbursement, equitable compensation, or other payment to the Contractor as a result of this Agreement or the work performed by the Contractor thereunder. The Contractor shall be responsible for all gross receipts tax related to this agreement.

C. The Agency makes no guarantee or representation regarding Contractors' ability, right, or entitlement to obtain an award of attorney's fees and costs from the court in the proposed litigation. In the event that Contractors fail to obtain an award of attorney's fees and/or costs, or Contractors do not obtain an award of attorney's fees and/or costs in the

amount desired or requested, Contractors shall have no recourse or right of recovery against the State of New Mexico or the Agency.

D. Since there are no costs associated with this Agreement, the Department of Finance and Administration's signature is not required.

**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.

**(---OR---)**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY the New Mexico Department of Justice. This Agreement shall terminate on \_\_\_\_\_ , \_\_\_\_\_ 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 support the Contractor in requesting and obtaining from the court such attorney's fees and costs 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. *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.**

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

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 detailed time and expenditure records both before and after payment. This Agreement shall not foreclose the right of the Agency to recover excessive or illegal compensation.

**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.

**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:

To the Contractor:

**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 New Mexico Department of Justice.**

By: \_\_\_\_\_  
Agency

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

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

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

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

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

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

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

(---OR---)

**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

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

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

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

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

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**  
**LETTER OF TRANSMITTAL FORM**

## **APPENDIX D**

### **Letter of Transmittal Form**

Please complete this form in its entirety. Failure to **sign and/or submit** this form will result in the disqualification of Offeror's proposal.

**RFP#:305-2024-0000002**

**1. Identify the following information for the submitting organization:**

<b>Offeror Name</b>	
<b>Mailing Address</b>	
<b>Telephone</b>	
<b>FED TIN#</b>	
<b>NM BTIN#</b>	

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

	<b>A Contractually Obligate</b>	<b>B Negotiate*</b>	<b>C Clarify/Respond to Queries*</b>
<b>Name</b>			
<b>Title</b>			
<b>E-mail</b>			
<b>Telephone</b>			

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

**3. Will any subcontractor/s be used in the performance of any resultant contract? (Select one):**

\_\_\_ No.  
 \_\_\_ Yes. Identify subcontractor/s: \_\_\_\_\_

**4. Will any other entity/-ies (such as a State Agency, reseller, etc., that is not a subcontractor identified in #3 above) be used in the performance of any resultant contract? (Select one)**

\_\_\_ No.  
 \_\_\_ Yes. Identify entity/-ies: \_\_\_\_\_

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

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

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

*(Must be signed by the individual identified in item #2.A, above.)*



## **APPENDIX E**

### **ORGANIZATIONAL REFERENCE QUESTIONNAIRE**

The New Mexico Department of Justice, as a part of the RFP process, requires Offerors to list a minimum of three (3) organizational references in their proposals. The purpose of these references is to document Offeror's experience relevant to the Section IV.A, Detailed Scope of Work in an effort to evaluate Offeror's ability to provide goods and/or services, performance under similar contracts, and ability to provide knowledgeable and experienced staffing.

Offeror is required to send the following Organizational Reference Questionnaire to each business reference listed in its proposal, as per Section IV.B.2. The business reference, if it chooses to respond, is required to submit its response to the Organizational Reference Questionnaire directly to: Melissa Spangler, [mspanler@nmdoj.gov](mailto:mspanler@nmdoj.gov) by April 25, 2024 at 12:00 p.m. MST/MDT for inclusion in the evaluation process. The Questionnaire and information provided will become a part of the submitted proposal. Businesses/Organizations providing references may be contacted for validation of content provided therein.

**RFP #305-2024-0000002**  
**ORGANIZATIONAL REFERENCE QUESTIONNAIRE**  
**FOR:**

\_\_\_\_\_  
(Name of Offeror)

This form is being submitted to your company for completion as a reference for the organization listed above. Submit this Questionnaire to the New Mexico Office of the Attorney General via e-mail at:

Name: Melissa Spangler  
Email: mspangler@nmdoj.gov

Forms must be submitted no later than April 29, 2024 at 12:00 p.m. MST/MDT, and **must not** be returned to the organization requesting the reference. References are **strongly encouraged** to provide comments in response to organizational ratings. The comments you provide will help the New Mexico Office of the Attorney General evaluate the above-referenced Offeror’s service history, successful execution of services and evidence of customer/client satisfaction.

**For questions or concerns regarding this form**, please contact the New Mexico Department of Justice **Procurement Manager** at mspangler@nmdoj.gov. When contacting the Procurement Manager, include the Request for Proposal number provided at the top of this page.

<b>Organization providing reference</b>	
<b>Contact name and title/position</b>	
<b>Contact telephone number(s)</b>	
<b>Contact e-mail address</b>	
<b>case description</b>	
<b>case dates (start and end dates)</b>	

QUESTIONS:

1. In what capacity have you worked with this law firm in the past?

COMMENTS:

2. How would you rate this law firm's knowledge and expertise?

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

COMMENTS:

3. How would you rate the law firm's flexibility relative to changes in the case scope and timelines?

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

COMMENTS:

4. How would you rate the communication and cooperation between the firm's personnel and your staff?

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

COMMENTS:

5. Who are/were the firm's principal representatives involved in your case and how would you rate them individually? Would you, please, comment on the skills, knowledge, behaviors or other factors on which you based the rating?

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

Name: \_\_\_\_\_ Rating:

Name: \_\_\_\_\_ Rating:

Name: \_\_\_\_\_ Rating:

Name: \_\_\_\_\_ Rating:

COMMENTS:

6. How satisfied are/were you with the legal services provided by the law firm?

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

COMMENTS:

7. With which aspect(s) of the firm's legal services are/were you most satisfied?

COMMENTS:

8. With which aspect(s) of the firm's legal services are/were you least satisfied?

COMMENTS:

9. Would you recommend this firm's legal services to your organization again?

COMMENTS: