

**STATE PURCHASING DIVISION
OF THE
GENERAL SERVICES DEPARTMENT
AND
NEW MEXICO PUBLIC EDUCATION DEPARTMENT**

REQUEST FOR PROPOSALS (RFP)

Public Education Commission Legal Representation



RFP#
18-92400-00003

AUGUST 7, 2017

AUGUST 17, 2017

Table of Contents

| | |
|--|-----|
| I. INTRODUCTION | 1 |
| A. PURPOSE OF THIS REQUEST FOR PROPOSALS | 1 |
| B. BACKGROUND INFORMATION | 1 |
| C. SCOPE OF PROCUREMENT | 2 |
| D. PROCUREMENT MANAGER..... | 3 |
| E. DEFINITION OF TERMINOLOGY | 3 |
| F. PROCUREMENT LIBRARY | 6 |
| II. CONDITIONS GOVERNING THE PROCUREMENT | 5 |
| A. SEQUENCE OF EVENTS..... | 5 |
| B. EXPLANATION OF EVENTS | 7 |
| 1. Issuance of RFP | 7 |
| 2. Distribution List Response Due | 7 |
| 3. Pre-Proposal Conference | 7 |
| 4. Deadline to Submit Written Questions..... | 6 |
| 5. Response to Written Questions..... | 8 |
| 6. Submission of Proposal..... | 6 |
| 7. Proposal Evaluation | 8 |
| 8. Selection of Finalist..... | 7 |
| 9. Best and Final Offers | 9 |
| 10. Oral Presentations | 9 |
| 11. Finalize Statewide Price Agreements..... | 8 |
| 12. Price Agreement Awards | 9 |
| 13. Protest Deadline..... | 8 |
| C. GENERAL REQUIREMENTS..... | 9 |
| 1. Acceptance of Conditions Governing the Procurement..... | 9 |
| 2. Incurring Cost | 10 |
| 3. Prime Contractor Responsibility..... | 10 |
| 4. Subcontractors..... | 9 |
| 5. Amended Proposals | 11 |
| 6. Offerors Rights to Withdraw Proposal | 11 |
| 7. Proposal Offer Firm | 11 |
| 8. Disclosure of Proposal Contents..... | 11 |
| 9. No Obligation..... | 12 |
| 10. Termination..... | 12 |
| 11. Sufficient Appropriation | 121 |
| 12. Legal Review | 12 |
| 13. Governing Law | 12 |
| 14. Basis for Proposal | 12 |
| 15. Contract Terms and Conditions | 13 |
| 16. Offeror’s Terms and Conditions | 13 |
| 17. Contract Deviations | 13 |
| 18. Offeror Qualifications..... | 13 |
| 19. Right to Waive Minor Irregularities | 14 |
| 20. Change in Contractor Representatives..... | 14 |

| | | |
|------|---|-----|
| 21. | Notice | 14 |
| 22. | Agency Rights..... | 143 |
| 23. | Right to Publish..... | 14 |
| 24. | Ownership of Proposals | 14 |
| 25. | Confidentiality | 14 |
| 26. | Electronic Mail Address Required..... | 13 |
| 27. | Use of Electronic Versions of this RFP | 15 |
| 28. | New Mexico Employees Health Coverage..... | 154 |
| 29. | Campaign Contribution Disclosure Form..... | 15 |
| 30. | Pay Equity Reporting Requirements..... | 16 |
| 31. | Disclosure Regarding Responsibility..... | 15 |
| 32. | Conflict of Interest: Governmental Conflict of Interest Act | 16 |
| III. | RESPONSE FORMAT AND ORGANIZATION..... | 17 |
| A. | NUMBER OF RESPONSES..... | 17 |
| B. | NUMBER OF COPIES..... | 19 |
| C. | PROPOSAL FORMAT | 20 |
| 1. | Proposal Content and Organization..... | 17 |
| 2. | Letter of Transmittal | 21 |
| IV. | SPECIFICATIONS..... | 19 |
| A. | TECHNICAL SPECIFICATIONS | 22 |
| 1. | Experience..... | 22 |
| 2. | References..... | 23 |
| 3. | Oral Presentation..... | 23 |
| B. | BUSINESS SPECIFICATIONS..... | 24 |
| 1. | Cost..... | 24 |
| 2. | Preferences..... | 20 |
| 3. | Financial Stability | 25 |
| 4. | Performance Bond | 25 |
| 5. | Letter of Transmittal..... | 21 |
| 6. | Campaign Contribution Form..... | 21 |
| 7. | Employee Health Coverage Form..... | 21 |
| 8. | Pay Equity Reporting..... | 22 |
| V. | EVALUATION..... | 22 |
| A. | EVALUATION POINT SUMMARY..... | 22 |
| B. | EVALUATION FACTORS..... | 23 |
| 1. | A (1) Organizational Experience (See Table 1)..... | 263 |
| 2. | A (2) Organizational References (See Table 1)..... | 23 |
| 3. | A (3) Oral Presentation (See Table 1)..... | 23 |
| 4. | B (1) Cost (See Table 1) | 27 |
| 5. | Resident Business or Resident Veterans Preference..... | 23 |
| 6. | B (2) Financial Stability (See Table 1)..... | 24 |
| 7. | B(3) Performance Bond (See Table 1)..... | 24 |
| 8. | B(4) Letter of Transmittal (See Table 1)..... | 24 |
| 9. | B(5) Campaign Contribution Disclosure Form (See Table 1)..... | 24 |
| 10. | B(6) Employee Health Coverage Form (See Table 1)..... | 24 |
| 11. | B(7) Pay Equity Reporting (See Table 1)..... | 24 |

| | |
|---|-----|
| C. EVALUATION PROCESS | 28 |
| APPENDIX A..... | 296 |
| ACKNOWLEDGEMENT OF RECEIPT FORM..... | 27 |
| APPENDIX B..... | 318 |
| CAMPAIGN CONTRIBUTION FORM..... | 29 |
| APPENDIX C..... | 352 |
| STATEWIDE PRICE AGREEMENT/CONTRACT TERMS AND CONDITIONS | |
| APPENDIX D..... | 33 |
| COST RESPONSE FORM..... | 34 |
| APPENDIX E..... | 476 |
| NEW MEXICO EMPLOYEES HEALTH COVERAGE FORM..... | 37 |
| APPENDIX F..... | 38 |
| LETTER OF TRANSMITTAL FORM..... | 39 |
| APPENDIX G..... | 40 |
| REFERENCE QUESTIONNAIRE | 41 |
| APPENDIX H..... | 45 |
| RESIDENT VETERANS CERTIFICATION | 46 |

I. INTRODUCTION

A. *PURPOSE OF THIS REQUEST FOR PROPOSALS*

The purpose of the Request for Proposal (RFP) is to solicit sealed proposals to establish a contract through competitive negotiations for the procurement of legal services for the Public Education Commission regarding questions of administrative law, open government law, substantive New Mexico charter school law, New Mexico and Federal education law, and other areas of law required in executing the authority of the Public Education Commission as a chartering authority.

B. *BACKGROUND INFORMATION*

The Public Education Commission is a statewide chartering authority. As such, the commission receives applications for initial chartering and renewals of charters for charter schools that want to be chartered by the state and approves or disapproves those charter applications. The commission may approve, deny, suspend or revoke the charter of a state-chartered charter school in accordance with the provisions of the Charter Schools Act. The commission is also responsible for:

- evaluating charter applications;
- actively pursuing the utilization of charter schools to satisfy identified education needs and promote a diversity of educational choices;
- approving charter applications that meet the requirements of the Charter Schools Act;
- declining to approve charter applications that fail to meet the requirements of the Charter Schools Act or are otherwise inadequate;
- negotiating and executing, in good faith, charter contracts that meet the requirements of the Charter Schools Act with each approved charter school;
- monitoring, in accordance with the requirements of the Charter Schools Act and the terms of the charter contract, the performance and legal compliance of charter schools under their authority;
- determining whether a charter school merits suspension, revocation or nonrenewal; and
- developing and maintaining chartering policies and practices consistent with nationally recognized principles and standards for quality charter authorizing in all major areas of authorizing.

PED is seeking to execute a contract for a provider of legal services to work with the Public Education Commission on an ongoing basis to support the commission in executing its legal chartering authority duties. This may include providing ongoing legal advice, representation in administrative hearings, and litigation arising from the administrative decisions and actions of the commission. The provider of legal services selected for representation must be experienced and knowledgeable in the in following areas of law:

- administrative law,
- open government law,
- charter school law,

- educational law,
- special education law,
- civil rights law,
- employment law,
- tribal sovereignty law, and
- FERPA.

The provider selected must be experienced in representing state agencies, and have recent state level litigation experience.

C. SCOPE OF PROCUREMENT

PED requests a multi-year proposal to provide services as identified in this RFP to work with the Public Education Commission on an ongoing basis to support the commission in executing its legal chartering authority duties for fiscal years ending June 30, 2018; June 30, 2019; June 30, 2020; and June 30, 2021. The term of the contract shall be one year, with the option to extend for three subsequent one-year terms at the same price, with the same terms and conditions stated on the Offeror's original proposal in response to this RFP. The scope of procurement shall encompass the Scope of Work in Section IV of this RFP effective beginning July 20, 2017 or upon execution.

- Attend meetings of the PEC and provide legal advice as requested at those meetings as it relates to questions of administrative law, open government law, substantive New Mexico charter law, New Mexico and Federal education law, and other areas of law required in executing the authority of the Public Education Commission as a chartering authority.
- Prepare letters or written decisions to charter schools and new school applicants regarding the authorizing decisions of the PEC and regarding corrective action taken or sanctions imposed by the PEC.
- Provide legal representation to the PEC in any legal hearings required by the PEC relating to non-renewal, revocation or other authorizer sanctions of charter schools. This includes initial decision making hearings, appeal hearings before the Secretary or an appointed hearing officer on the Secretary's behalf, and appeal hearings in New Mexico courts regarding related PEC authorizing decisions.
- Provide legal representation to the PEC regarding any appeals related to PEC authorizing decisions.
- If requested by the Chair, provide a legal review of negotiation worksheets and renewals of Performance Contracts and Performance Frameworks during the term of the contract.
- If requested by the Chair, provide legal representation during the negotiation process of performance contracts and or performance Frameworks.
- Provide a legal Review of the annual report by the PEC for submittal to PED and provide legal guidance related to submission or finalization of the report.
- The attorney(s) shall not provide legal advice or representation to the PEC for the purposes of bringing legal claim, in any jurisdiction or venue, on the PEC's own initiative against the PED or any representative of the PED as a named party.

PLEASE NOTE:

- 1) If this is a procurement that will result in a statewide price agreement, that agreement is available to all executive agencies and other political subdivisions of the State of New Mexico.
- 2) If this is a procurement that will result in a contractual agreement between two parties, the procurement may ONLY be used by those two parties exclusively.

D. PROCUREMENT MANAGER

The New Mexico Public Education Department 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: Katie Poulos, Procurement Manager
Address: 300 Don Gaspar, Rm. 301
Santa Fe, NM 87501
Telephone: (505) 827-6532
Fax: (505) 827-7839
Email: katie.poulos@state.nm.us

2. All deliveries of responses via express carrier must be addressed as follows:

Name: Katie Poulos, Procurement Manager
Address: 300 Don Gaspar, Rm. 301
Santa Fe, NM 87501
Telephone: (505) 827-6532
Fax: (505) 827-7839
Email: katie.poulos@state.nm.us

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

E. DEFINITION OF TERMINOLOGY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“IT” means Information Technology.

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

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

"Multiple Source Award" means an award of an indefinite quantity contract for one or more similar services, items of tangible personal property or construction to more than one Offeror.

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

"Price Agreement" means a definite quantity contract or indefinite quantity contract which requires the contractor to furnish items of tangible personal property, services or construction to a state agency or a local public body which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.

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

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

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

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

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

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

"SPD" means State Purchasing Division of the New Mexico State General Services Department.

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

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

“State Agency means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of this state. “State agency” includes the purchasing division of the general services department and the state purchasing agent but does not include local public bodies.

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

“WSCA” means Westerns States Contracting Alliance.

F. PROCUREMENT LIBRARY

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

Procurement Regulations and Request for Proposal – RFP instructions:

<http://www.generalservices.state.nm.us/statepurchasing/>.

II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule, description and conditions governing the procurement.

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 | PED | August 7, 2017 |
| 2. Distribution List | Agency | August 8, 2017 |
| 3. Deadline to submit Questions | Potential Offerors | August 9, 2017 |
| 4. Response to Written Questions | Procurement Manager | August 10, 2017 |
| <i>5. Submission of Proposal</i> | <i>Potential Offerors</i> | August 17, 2017 |
| 6. Proposal Evaluation | Evaluation Committee | August 17-19, 2017 |
| 7. Selection of Finalists | Evaluation Committee | August 22, 2017 |
| 8. Best and Final Offers | Finalist Offerors | August 23, 2017 |

| | | |
|-------------------------------------|--------------------------|-------------------------------|
| 9. Oral Presentation(s) | Finalist Offerors | August 23, 2017 after 4:30 pm |
| 10. Finalize Contractual Agreements | Agency/Finalist Offerors | August 25, 2017 |
| 11. Contract Awards | Agency/Finalist Offerors | July 25, 2017 |
| 12. Protest Deadline | SPD | September 7, 2017 |

B. EXPLANATION OF EVENTS

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

1. Issuance of RFP

This RFP is being issued on behalf of the New Mexico State NMPED, on August 7, 2017.

2. Distribution List Response Due

Potential Offerors should hand deliver, return by facsimile or registered or certified mail the "Acknowledgement of Receipt of Request for Proposals Form" that accompanies this document, APPENDIX A, to have their organization placed on the procurement distribution list. The form should be signed by an authorized representative of the organization, dated and returned to the Procurement Manager by 3:00 pm MDT on August 8, 2017.

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

3. Pre-Proposal Conference

An in-person pre-proposal conference will not be held. Instead, Potential Offeror(s) are encouraged to submit written questions in advance of the conference to the Procurement Manager (see Section I, Paragraph D). The identity of the organization submitting the question(s) will not be revealed. Additional written questions may be submitted at the conference. All written questions will be addressed in writing on the date listed in the Sequence of Events.

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 August 9, 2017 at 4:00 p.m. Mountain Daylight Time as

indicated in the sequence of events. All written questions must be addressed to the Procurement Manager as declared in Section I, Paragraph D.

5. Response to Written Questions

Written responses to written questions will be distributed as indicated in the sequence of events to all potential Offerors whose organization name appears on the procurement distribution list. An e-mail copy will be sent to all Offerors that provide Acknowledgement of Receipt Forms described in II.B.2 before the deadline. Additional copies will be posted to: <http://ped.state.nm.us/ped/rfps.html>.

6. Submission of Proposal

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 3:00 PM MOUNTAIN DAYLIGHT TIME ON August 17, 2017. Proposals received after this deadline will not be accepted. The date and time of receipt will be recorded on each proposal.

Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section I, Paragraph D2. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the Public Education Commission Legal Representation RFP, Number 18-92400-00003. Proposals submitted by facsimile, or other electronic means, will not be accepted.

A public log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to Section 13-1-116 NMSA 1978, the contents of proposals shall not be disclosed to competing potential Offerors during the negotiation process. The negotiation process is deemed to be in effect until the contract is awarded pursuant to this 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 the sequence of events, depending upon the number of proposals received. During this time, the Procurement Manager may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals. However, proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors.

8. Selection of Finalists

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

9. Best and Final Offers

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers by as per schedule Section II, A., Sequence of Events or as soon as possible. Best and final offers may also be clarified and amended at finalist Offeror's oral presentation and demonstration.

10. Oral Presentations

Finalist Offerors may be required to conduct an oral presentation at a location to be determined as per schedule Section II, A Sequence of Events or as soon as possible.

11. Finalize Contractual Agreements

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

12. Contract Awards

After review of the Evaluation Committee Report and the signed contractual agreement, the Agency Procurement office will award as per the schedule in Section II, A., Sequence of Events or as soon as possible thereafter. This date is subject to change at the discretion of the State Purchasing Division or relevant Agency Procurement office.

The contract shall be awarded to the Offeror (or Offerors) whose proposals are most advantageous to the State of New Mexico and the Public Education Commission taking into consideration the evaluation factors set forth in this RFP. The most advantageous proposal may or may not have received the most points. The award is subject to appropriate Department and State approval.

13. Protest Deadline

A Any protest by an Offeror must be timely and in conformance with NMSA 1978, § 13-1-172 and applicable procurement regulations. As a Protest Manager has been named in this Request for Proposals, pursuant to NMSA 1978, § 13-1-172, ONLY protests delivered directly to the Protest Manager in writing and in a timely fashion will be

considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. The 15 calendar day protest period shall begin on the day following the award of contracts and will end at 5:00 p.m. MST/MDT on the 15th day. A protest must be written and must include the name and address of the protestor and the RFP number. It must also contain a statement of the grounds for protest including appropriate supporting exhibits, and it must specify the ruling requested from the party listed below. The protest must be delivered to

Mr. Lawrence Maxwell
New Mexico State Purchasing Agent and Director
Joseph M. Montoya State Building, Room 2016
1100 St. Francis Drive
Santa Fe, NM 87505

Mailing Address:
P.O. Drawer 26110
Santa Fe, NM 87502

Protests received after the deadline will not be accepted.

C. GENERAL REQUIREMENTS

1. Acceptance of Conditions Governing the Procurement

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

2. Incurring Cost

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

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

5. Amended Proposals

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

6. Offeror's Rights to Withdraw Proposal

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

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

7. Proposal Offer Firm

Responses to this RFP, including proposal prices for services, will be considered firm for one hundred twenty (120) days after the due date for receipt of proposals or ninety (90) days after the due date for the receipt of a best and final offer, if the Offeror is invited or required to submit one.

8. Disclosure of Proposal Contents

- A. Proposals will be kept confidential until negotiations and award are completed by the Agency. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for material that is clearly marked proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the potential Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements:
- B. Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.
- C. Confidential data is restricted to:
 - 1. confidential financial information concerning the Offeror's organization;
 - 2. and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, Sections 57-3A-1 to 57-3A-7 NMSA 1978.
 - 3. PLEASE NOTE: The price of products offered or the cost of services proposed **shall not be designated** as proprietary or confidential information.

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

9. No Obligation

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

10. Termination

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

11. Sufficient Appropriation

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

12. Legal Review

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

13. Governing Law

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

14. Basis for Proposal

Only information supplied, in writing, by the Agency through the Procurement Manager or in this RFP should be used as the basis for the preparation of Offeror proposals.

15. Contract Terms and Conditions

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

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

Should an Offeror object to any of the terms and conditions in RFP (Sample 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 are not acceptable to the Agency and will result in disqualification of the Offeror's proposal.

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

16. Offeror's Terms and Conditions

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

17. Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between the Agency and the Offeror selected and shall not be deemed an opportunity to amend the Offeror's proposal.

18. Offeror Qualifications

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

19. Right to Waive Minor Irregularities

The Evaluation Committee reserves the right to waive minor irregularities. The Evaluation Committee also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

20. Change in Contractor Representatives

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

21. Notice of Penalties

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

22. Agency Rights

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

23. Right to Publish

Throughout the duration of this procurement process and contract term, Offerors and contractors must secure from the agency written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or agency contracts deriving from this procurement. Failure to adhere to this requirement may result in disqualification of the Offeror's proposal or removal from the contract.

24. Ownership of Proposals

All documents submitted in response to the RFP shall become property of the State of New Mexico.

25. Confidentiality

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

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

26. Electronic mail address required

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

27. Use of Electronic Versions of this RFP

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

http://www.generalservices.state.nm.us/statepurchasing/ITBs_RFPs_and_Bid_Tabulation.aspx.

28. New Mexico Employees Health Coverage

1. For all contracts solicited and awarded on or after January 1, 2008: If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Offeror must agree to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
2. Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.
3. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information <http://insurenwemexico.state.nm.us/>.

29. Campaign Contribution Disclosure Form

Offeror must complete, sign, and return the Campaign Contribution Disclosure Form, APPENDIX B, as a part of their proposal. This requirement applies regardless whether a

covered contribution was made or not made for the positions of Governor and Lieutenant Governor or other identified official. Failure to complete and return the signed unaltered form will result in disqualification.

30. Letter of Transmittal

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

1. Identify the submitting business entity.
2. Identify the name, title, telephone, and e-mail address of the person authorized by the Offeror organization to contractually obligate the business entity providing the Offer.
3. Identify the name, title, telephone, and e-mail address of the person authorized to negotiate the contract on behalf of the organization (if different than (2) above).
4. Identify the names, titles, telephone, and e-mail addresses of persons to be contacted for clarification/questions regarding proposal content.
5. Identify sub-contractors (if any) anticipated to be utilized in the performance of any resultant contract award.
6. Describe the relationship with any other entity which will be used in the performance of this awarded contract.
7. Identify the following with a check mark and signature where required:
 - a. Explicitly indicate acceptance of the Conditions Governing the Procurement stated in Section II. C.1;
 - b. Explicitly indicate acceptance of Section V of this RFP; and
 - c. Acknowledge receipt of any and all amendments to this RFP.
8. Be signed by the person identified in para 2 above.

31. Pay Equity Reporting Requirements

- A. If the Offeror has ten (10) or more employees OR eight (8) or more employees in the same job classification, Offeror must complete and submit the required reporting form (PE10-249) if they are awarded a contract.
- B. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, Offeror must also agree to complete and submit the required form annually within thirty (30) calendar days of the annual bid or proposal submittal anniversary date and, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract.
- C. Should Offeror not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting,

offer must agree to provide the required report within ninety (90) calendar days of meeting or exceeding the size requirement.

- D. Offeror must also agree to levy these reporting requirements on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Offeror must further agree that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, offer will submit the required report, for each such subcontractor, within ninety (90) calendar days of that subcontractor meeting or exceeding the size requirement.”

32. Disclosure Regarding Responsibility

- A. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any state agency or local public body for professional services, tangible personal property, services, or construction agrees to disclose whether the Contractor, or any principal of the Contractor’s company:
1. is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency, or local public body;
 2. has within a three-year period preceding this offer been convicted in a criminal matter or had a civil judgment rendered against them for
 - a. the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract;
 - b. violation of Federal or state antitrust statutes related to the submission of offers; or
 - c. the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property;
 3. is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure;
 4. has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.
 - a. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

- b. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
 - c. Have within a three-year period preceding this offer had one or more contracts terminated for default by any federal or state agency or local public body.)
- B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.
- C. The Contractor shall provide immediate written notice to the SPA or other party to this Agreement if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.
- D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will render the Offeror nonresponsive.
- E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.
- F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state, or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the SPA or other party to this Agreement. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the SPA or Central Purchasing Officer may terminate the involved contract for cause. Still further the SPA or Central Purchasing Officer may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the SPA or Central Purchasing Officer.

33. New Mexico Preferences

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

A. New Mexico Business Preference

B. New Mexico Resident Veterans Business Preference

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

The New Mexico Preferences shall not apply when the expenditures for this RFP include federal funds.

34. Conflict of Interest; Governmental Conduct Act.

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

III. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

Offerors shall submit only one proposal in response to RFP. (To include the copies as stated in “B”)

B. NUMBER OF COPIES

Offerors shall deliver:

- One (1) ORIGINAL and six (6) identical HARD COPIES of Binder 1 (Technical Proposal); Original and all copies shall be in separate labeled binders; all confidential information in the proposal shall be clearly identified and easily segregated from the rest of the proposal.
- One (1) ORIGINAL and six (6) identical HARD COPIES of Binder 2 (Cost Proposal); Original and all copies shall be in separate labeled binders.

- One (1) electronic version/copy of the proposal containing ONLY the Technical Proposal. This copy must not contain any of the Cost information.
 - One (1) electronic version/copy of the Cost Proposal.
 - All Confidential Information shall be clearly identified and segregated on the electronic version mirroring the hard copy submitted.
- Proposals containing confidential information **must** be submitted as two separate binders:
- **Unredacted** version for evaluation purposes
 - **Redacted** version (information blacked out and not omitted or removed) for the public file

Any proposal that does not adhere to the requirements of Section III.B, Response Format and Organization, may be deemed non-responsive and rejected on that basis.

C. PROPOSAL FORMAT

All proposals must be submitted as follows:

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

1. Proposal Content and Organization

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

Technical Proposal (Binder 1):

- a) Signed Letter of Transmittal
- b) Table of Contents
- c) Proposal Summary (Optional)
- d) Response to Specifications (**except cost information which shall be included in Cost Proposal/Binder 2 only**)
- e) Response to Contract Terms and Conditions
- f) Offeror's Additional Terms and Conditions
- g) Signed Campaign Contribution Form
- h) Signed Employee Health Coverage Form
- i) Signed Affidavit pursuant to Governmental Conduct Act (If applicable)
- j) Resident Vendor or Resident Veteran Certificate (If applicable)
- k) Resident Veterans Preference Certification (If applicable)
- l) Conflict of Interest Affidavit (If applicable)
- m) Other Supporting Material (Optional)

Cost Proposal (Binder 2):

Completed Cost Response Form

Within each section of the proposal, Offerors should address the items in the order in which they appear in this RFP. All forms provided in this RFP must be thoroughly completed and included in the appropriate section of the proposal. All discussion of proposed costs, rates or expenses must occur only in Binder #2 on the cost response form.

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

The proposal summary may be included by potential Offerors to provide the Evaluation Committee with an overview of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the Offeror's proposal.

2. Letter of Transmittal

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

1. Identify the submitting business entity.
2. Identify the name, title, telephone, and e-mail address of the person authorized by the Offeror organization to contractually obligate the business entity providing the Offer.
3. Identify the name, title, telephone, and e-mail address of the person authorized to negotiate the contract on behalf of the organization (if different than (2) above).
4. Identify the names, titles, telephone, and e-mail addresses of persons to be contacted for clarification/questions regarding proposal content.
5. Identify sub-contractors (if any) anticipated to be utilized in the performance of any resultant contract award.
6. Describe the relationship with any other entity which will be used in the performance of this awarded contract.
7. Identify the following with a check mark and signature where required:
 - a. Explicitly indicate acceptance of the Conditions Governing the Procurement stated in Section II, Paragraph C.1;
 - b. Acceptance of Section V of this RFP; and
 - c. Acknowledge receipt of any and all amendments to this RFP.
8. Be signed by the person identified in para 2 above.

IV. SPECIFICATIONS

Offerors should respond in the form of a thorough narrative to each specification, unless otherwise instructed. The narratives, including required supporting materials will be evaluated and awarded points accordingly.

A. DETAILED SCOPE OF WORK

Offeror shall establish an hourly rate for legal representation, including administrative hearings and litigation based on senior and/or junior attorneys, paralegal and/or clerical staff.

B. TECHNICAL SPECIFICATIONS

1. Experience

Offerors **must**:

- (a) provide a description of relevant experience with state government and private sector. The experience of all proposed subcontractors must be described. The narrative **must** thoroughly describe how the Offeror has supplied expertise for similar contracts and must include the extent of their experience, expertise and knowledge as a provider of successful legal representation of state government agencies in administrative and educational matters. All such legal representation provided to the private sector will also be considered.
- (b) indicate how many state government agencies it has represented in administrative matters and litigation related to public education in the past two years and what percentage of business revenue is derived from representation of state agencies in those matters and litigation;
- (c) identify **specific**, relevant legal experience the Offeror possesses in each of the following areas, specifically in relation to governing federal and New Mexico law that applies to the oversight and administration of public schools:
 - i. administrative law,
 - ii. open government law,
 - iii. charter school law,
 - iv. education law,
 - v. special education law,
 - vi. civil rights law,
 - vii. employment law,
 - viii. tribal sovereignty law, and
 - ix. FERPA.
- (d) describe at least two project successes and failures of representation that occurred in administrative matters or litigation related to public education on behalf of a state government agency. Include how each experience improved the Offeror's services.
- (e) identify any potential legal/ethical conflicts that may arise during the course of providing representation to the Public Education Commission and describe why those conflicts will not impact the Offeror's ability to provide the required representation.

2. Business References

Offerors shall provide a minimum of three (3) references from similar projects performed for private, state or large local government clients within the last three years. **Offerors are required to submit APPENDIX G, Reference Form, to the business references they list. The business references must submit the Reference Form directly to the designee described in Sec I Paragraph D.** It is the Offeror's responsibility to ensure the completed forms are received on or before July 17, 2017 for inclusion in the evaluation process. Business References that are not received, or are not complete, may adversely affect the vendor's score in the evaluation process. The Evaluation Committee may contact any or all business references for validation of information submitted. If this step is taken, the Procurement Manager and the Evaluation Committee must all be together on a conference call with the submitted reference so that the Procurement Manager and all members of the Evaluation Committee receive the same information. Additionally, the Agency reserves the right to consider any and all information available to it (outside of the Business Reference information required herein), in its evaluation of Offeror responsibility per Section II, Para C.18.

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

- a) Client name;
- b) Project description;
- c) Project dates (starting and ending);
- d) Technical environment (i.e., Software applications, Internet capabilities, Data communications, Network, Hardware);
- e) Staff assigned to reference engagement that will be designated for work per this RFP; and
- f) Client project manager name, telephone number, fax number and e-mail address.

3. Oral Presentation

If selected as a finalist, Offerors **must** agree to provide the Evaluation Committee the opportunity to interview proposed staff members identified by the Evaluation Committee, at the option of the Agency. The Evaluation Committee may request a finalist to provide an oral presentation of the proposal as an opportunity for the Evaluation Committee to ask questions and seek clarifications. **A statement of concurrence must be submitted in the Offeror's proposal.**

4. Mandatory Specification

- A. Offeror must demonstrate that it has represented governmental entities (state or local entities) in educational matters, which have included both litigation and administrative hearings.
- B. Offeror must demonstrate that it has represented governmental boards/commissions (state or local boards/commissions) in circumstances

requiring compliance with open government requirements, and that the representation included providing ongoing legal advice to ensure board/commission compliance with the open meetings act.

- C. Offeror must demonstrate that it has represented governmental boards/commissions (state or local boards/commissions) in administrative law matters.
- D. Offeror must list at least two of its successful administrative hearings or lawsuits in educational matters on behalf of governmental entities.
- E. Offeror must not have any legal/ethical conflicts that will impact the Offeror's ability to provide the required representation.

5. Desirable Specification

- A. Discuss the Offeror's intention and ability to make providing legal representation to the Public Education Commission a priority, including staffing available for attendance at commission meetings, research, consultation, in-hearing representation, and appeals.
- B. Identify specific challenges the Offeror believes the Public Education Commission faces in fulfilling its statutory responsibilities.
- C. Identify and describe the Offeror's attributes that make the Offeror the strongest candidate for providing this representation and helping the Public Education Commission overcome the challenges it faces in fulfilling its statutory responsibilities.

C. BUSINESS SPECIFICATIONS

1. Cost

Offerors must complete the Cost Response Form in APPENDIX D. Cost will be measured by the hourly rate for senior and junior attorneys, paralegals and clerical staff as detailed in Appendix D.

2. Resident Business or Resident Veterans Preference

To ensure adequate consideration and application of 13-1-21 NMSA (as amended), Offerors must include a copy of their preference certificate in this section. In addition, for resident Veterans Preference, the attached certification Form (APPENDIX H) must accompany any Offer and any business wishing to receive the preference must complete and sign the form.

3. Financial Stability

Offerors **must** submit copies of the most recent years independently audited financial statements and the most current 10K, as well as financial statements for the preceding three years, if they exist. The submission **must** include the audit opinion, the balance sheet, and statements of income, retained earnings, cash flows, and the notes to the financial statements. If independently audited financial statements do not exist, Offeror **must** state the reason and, instead, submit

sufficient information (e.g. D & B report) to enable the Evaluation Committee to assess the financial stability of the Offeror.

4. Performance Bond

Offeror(s) must have the ability to secure a Performance Surety Bond in favor of the Agency to insure the Contractor's performance upon any subsequent contract award. Each engagement will be different but the option must be available to the Agencies to require at time of contract award. **A statement of concurrence must be submitted in the Offerors proposal.**

5. Letter of Transmittal Form

The Offeror's proposal **must** be accompanied by the Letter of Transmittal Form located in APPENDIX F. The form **must** be completed and must be signed by the person authorized to obligate the company.

6. Campaign Contribution Disclosure Form

The Offeror **must** complete an unaltered Campaign Contribution Disclosure Form and submit a signed copy with the Offeror's proposal. This must be accomplished whether or not an applicable contribution has been made. (See APPENDIX B)

7. Employee Health Coverage Form

The Offeror **must** agree with the terms as indicated in APPENDIX E. The unaltered form **must** be completed, signed by the person authorized to obligate the Offeror's firm and submitted with Offeror's proposal.

8. Pay Equity Reporting

The Offeror **must** agree with the requirements of reporting as defined in Section II.C.30. Report is due at the time of contract award. **A statement of concurrence with this requirement must be included in Offeror's submitted proposal.**

V. EVALUATION

A. EVALUATION POINT SUMMARY

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

Table 1: Evaluation Point Summary

110 points

| Factor | Points Available |
|--|---------------------------------------|
| B Technical Specifications | (must total 100% of available points) |
| B(1) Experience | 10 |
| B(2) Business References | 6 |
| B(3) Oral Presentations | 10 |
| B(4) Required Deliverables | 50 |
| B(5) Desirable Specification | 24 |
| C Business Specifications | |
| C(1) Cost | 10 |
| C(3) Financial Stability | Pass/Fail |
| C(4) Performance Bond | Pass/Fail |
| C(5) Letter Of Transmittal | Pass/Fail |
| C(6) Campaign Contribution Disclosure Form | Pass/Fail |
| C(7) Employee Health Coverage Form | Pass/Fail |
| C(8) Pay Equity Reporting | Pass/Fail |
| TOTAL | 110 points |
| Preference Points per Section IV C. 2 | |

B. EVALUATION FACTORS

1. B.1 Experience (See Table 1)

Up to 10 points will be awarded based on the thoroughness and clarity of the response, the breadth and depth of the engagements cited and the perceived validity of the response.

2. B.2 Business References

Up to 6 points will be awarded based upon an evaluation of the responses provided from three references as required by B. 2 of this section.

3. B. 3 Oral Presentation (See Table 1)

Points will be awarded based on the quality, organization and effectiveness of communication of the information presented and responses provided to questions posed, 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.

4. B.4.Mandatory Specifications (See Table 1)

Up to 50 points will be awarded in total for Mandatory Specifications. Up to 10 points will be awarded for each subspecification listed above in Section IV, para. B.4 herein. These subspecifications include experience with litigation and administrative hearings, supporting boards/commissions in complying with open government requirements, administrative law matters, identifying two successful administrative hearings or lawsuits in educational matters on behalf of governmental entities, and identifying there are no legal/ethical conflicts that will impact the Offeror’s ability to provide the required representation.

5. B.5. Desirable Specifications (See Table 1)

Up to 24 points will be awarded in total for Desirable Specifications. Up to 8 points will be awarded for each subspecification listed above in Section IV., para. B5 herein. These subspecifications include making providing legal representation to the Public Education Commission a priority, identifying challenges the Public Education Commission faces in fulfilling its statutory responsibilities, and identifying attributes that will helping the Public Education Commission overcome the challenges it faces in fulfilling its statutory responsibilities.

6. C.1 Cost

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

$$\frac{\text{Lowest Responsive Offer Bid}}{\text{-----}} \times \text{Available Award Points}$$

This Offeror’s Bid

Offeror must indicate the hourly rate for senior attorneys separate from junior attorneys, paralegal, law clerks and clerical staff.

7. Resident Business or Resident Veterans Preference

Preference evaluation will be determined by:

- A) Offerors’ demonstration of qualification for preference (properly signed and submitted Preference form per Section IV, para. B.2. above) and then (after qualification for preference has been established),
- B) Application of preference will be based upon the statutory guidance at 13-1-21 of NM State Procurement Code. Once the RFP is scored, the appropriate percent of preference will be applied.

8. C (3) Financial Stability (See Table 1)

Pass/Fail only. No points assigned.

9. C (4) Performance Bond (See Table 1)

Pass/Fail only. No points assigned.

8. C (5) Letter of Transmittal (See Table 1)

Pass/Fail only. No points assigned.

9. C (6) Campaign Contribution Disclosure Form (See Table 1)

Pass/Fail only. No points assigned.

10. C (7) Employee Health Coverage Form (See Table 1)

Pass/Fail only. No points assigned.

11. C (8) Pay Equity Reporting (See Table 1)

Pass/Fail only. No points assigned.

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, Paragraph B.7.
3. The Evaluation Committee may use other sources of information to perform the evaluation as specified in Section II, Paragraph C.18.
4. Responsive proposals will be evaluated on the factors in Section IV, which have been assigned a point value. The responsible Offerors with the highest scores will be selected as finalist Offerors, based upon the proposals submitted. The responsible Offerors whose proposals are most advantageous to the State taking into consideration the evaluation factors in Section IV will be recommended for award (as specified in Section II, Paragraph B.8). 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
PROFESSIONAL SERVICES CONTRACT**

**Public Education Commission Legal Representation
RFP# 18-92400-00003**

ACKNOWLEDGEMENT OF RECEIPT FORM

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

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than July 7, 2017. Only potential Offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all Offeror written questions and the written responses to those questions as well as RFP amendments, if any are issued.

FIRM: _____

REPRESENTED BY: _____

TITLE: _____ PHONE NO.: _____

E-MAIL: _____ FAX NO.: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

SIGNATURE: _____ DATE: _____

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

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

Katie Poulos, Procurement Manager
Public Education Commission Legal Representation
Room 301
300 Don Gaspar
Santa Fe, NM 87505
E-mail: Katie.Poulos@state.nm.us

APPENDIX B
CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Campaign Contribution Disclosure Form

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

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

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

The following definitions apply:

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

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

their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

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

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

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

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

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

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

—OR—

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

Signature

Date

Title (Position)

APPENDIX C

STATE OF NEW MEXICO

PUBLIC EDUCATION DEPARTMENT
PROFESSIONAL SERVICES CONTRACT # _____

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

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

The Contractor shall perform the following work:

2. Compensation.

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

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

(—OR—)

(CHOICE – MULTI-YEAR)

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

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

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

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

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the Agency finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the Agency that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the agency shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE DFA. This Agreement shall terminate on **(DATE)** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with NMSA 1978, § 13-1-150, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in NMSA 1978, § 13-1-150.

4. Termination.

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

B. Notice; Agency Opportunity to Cure.

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

2. Contractor shall give Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Agency must do to cure such material breaches. Contractor's notice of termination

shall only be effective (i) if the Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

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

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Agency's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

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

5. Appropriations.

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

6. Status of Contractor.

The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as

a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. Assignment.

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

8. Subcontracting.

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

9. Release.

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

10. Confidentiality.

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

11. Product of Service -- Copyright.

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

12. Conflict of Interest; Governmental Conduct Act.

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

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

- 1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any

Agency employee while such employee was or is employed by the Agency and participating directly or indirectly in the Agency's contracting process;

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

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

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

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

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

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

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

13. Amendment.

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

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

14. Merger.

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

15. Penalties for violation of law.

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

16. Equal Opportunity Compliance.

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

17. Applicable Law.

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

18. Workers Compensation.

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers

Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Agency.

19. Records and Financial Audit.

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

20. Indemnification.

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

21. New Mexico Employees Health Coverage.

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

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

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

22. Employee Pay Equity Reporting.

Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more

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

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

23. Invalid Term or Condition.

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

24. Enforcement of Agreement.

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

25. Notices.

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

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

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

26. Authority.

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

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

By: _____
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 DFA Contracts Review Bureau:

By: _____
DFA Contracts Review Bureau

Date: _____

APPENDIX D

COST RESPONSE FORM

Base Period: (July 1, 2017 thru June 30, 2018)

| Description | Type | Quantity | Cost per Item |
|-------------|-----------------|----------|---------------|
| | Senior attorney | Per hour | |
| | Jr. attorney | Per hour | |
| | Paralegal | Per hour | |
| | Clerical Staff | Per hour | |

(includes all labor, materials, equipment, transportation, fees and taxes to provide the Services described in Section I, para C, (as amended by any current RFP amendments for the period specified above)

Option Year 1: (July 1, 2018 thru June 30, 2019)

| Description | Type | Quantity | Cost per Item |
|-------------|-----------------|----------|---------------|
| | Senior attorney | Per hour | |
| | Jr. attorney | Per hour | |
| | Paralegal | Per hour | |
| | Clerical Staff | Per hour | |

(includes all labor, materials, equipment, transportation, fees and taxes to provide the Services described in Section I, para C, (as amended by any current RFP amendments for the period specified above)

Option Year 2: (July 1, 2019 thru June 30, 2020)

| Description | Type | Quantity | Cost per Item |
|-------------|-----------------|----------|---------------|
| | Senior attorney | Per hour | |
| | Jr. attorney | Per hour | |
| | Paralegal | Per hour | |
| | Clerical Staff | Per hour | |

(includes all labor, materials, equipment, transportation, fees and taxes to provide the Services described in Section I, para C, (as amended by any current RFP amendments for the period specified above)

Option Year 3: (July 1, 2020 thru June 30, 2021)

| Description | Type | Quantity | Cost per Item |
|-------------|-----------------|----------|---------------|
| | Senior attorney | Per hour | |
| | Jr. attorney | Per hour | |
| | Paralegal | Per hour | |
| | Clerical Staff | Per hour | |

(includes all labor, materials, equipment, transportation, fees and taxes to provide the Services described in Section I, para C, (as amended by any current RFP amendments for the period specified above)

APPENDIX E

NEW MEXICO EMPLOYEES HEALTH COVERAGE FORM

New Mexico Employees Health Coverage Form

1. For all contracts solicited and awarded on or after January 1, 2008: If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Offeror must agree to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

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

3. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information <http://insurenemexico.state.nm.us/>.

Signature of Offeror: _____

Date_____

APPENDIX F
LETTER OF TRANSMITTAL FORM

APPENDIX F

Letter of Transmittal Form

RFP#: _____

Offeror Name: _____

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

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

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

Name _____

Title _____

E-Mail Address _____

Telephone Number _____

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

Name _____

Title _____

E-Mail Address _____

Telephone Number _____

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

Name _____

Title _____

E-Mail Address _____

Telephone Number _____

5. Use of Sub-Contractors (Select one)

___ No sub-contractors will be used in the performance of any resultant contract OR

___ The following sub-contractors will be used in the performance of any resultant contract:

(Attach extra sheets, as needed)

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

(Attach extra sheets, as needed)

7. ___ On behalf of the submitting organization named in item #1, above, I accept the Conditions Governing the Procurement as required in Section II, Paragraph C.1.

___ I concur that submission of our proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.

___ I acknowledge receipt of any and all amendments to this RFP.

_____, 2017
Authorized Signature and Date (Must be signed by the person identified in item #2, above.)

APPENDIX G

REFERENCE QUESTIONNAIRE

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

Offeror is required to send the following reference form to each business reference listed. The business reference, in turn, is requested to submit the Reference Form directly to: Katie Poulos, Procurement Manager; 300 Don Gaspar, Rm. 301; Santa Fe, NM 87501 by July 17, 2017 for inclusion in the evaluation process. The form and information provided will become a part of the submitted proposal. Business references provided may be contacted for validation of content provided therein.

RFP # 18-92400-00003
ORGANIZATIONAL REFERENCE QUESTIONNAIRE
FOR:

(Name of Offeror)

This form is being submitted to your company for completion as a business reference for the company listed above. This form is to be returned to the State of New Mexico, State of New Mexico, Public Education Department via e-mail at:

Name: Katie Poulos, Procurement Manager
Address: Room 301
300 Don Gaspar
Santa Fe, NM 87501
Telephone: 505-469-0373
Email: katie.poulos@state.nm.us

no later than July 17, 2017, and **must not** be returned to the company requesting the reference.

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

CONFIDENTIAL INFORMATION WHEN COMPLETED

| | |
|---|--|
| Company providing reference: | |
| Contact name and title/position | |
| Contact telephone number | |
| Contact e-mail address | |
| Project description | |
| Project dates (starting and ending) | |
| Technical environment (i.e., Software applications, Internet capabilities, Data communications, Network, Hardware) | |

6. Who were the vendor's principal representatives involved in your project and how would you rate them individually? Would you comment on the skills, knowledge, behaviors or other factors on which you based the rating?

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

Name: _____ Rating:

Name: _____ Rating:

Name: _____ Rating:

Name: _____ Rating:

COMMENTS:

7. How satisfied are you with the services provided by the vendor?

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

COMMENTS:

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

COMMENTS:

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

COMMENTS:

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

COMMENTS:

APPENDIX H
RESIDENT VETERANS CERTIFICATION

Resident Veterans Preference Certification

_____ (NAME OF CONTRACTOR) hereby certifies the following in regard to application of the resident veterans' preference to this procurement:

Please check one box only

- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than \$1M allowing me the 10% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.
- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$1M but less than \$5M allowing me the 8% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.
- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$5M allowing me the 7% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

“I agree to submit a report, or reports, to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31, the following to be true and accurate:

“In conjunction with this procurement and the requirements of this business' application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under Sections 13-1-21 or 13-1-22 NMSA 1978, when awarded a contract which was on the basis of having such veterans preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.

“I understand that knowingly giving false or misleading information on this report constitutes a crime.”

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

(Signature of Business Representative)* (Date)

*Must be an authorized signatory for the Business. The representations made in checking the boxes constitutes a material representation by the business that is subject to protest and may result in denial of an award or termination of award of the procurement involved if the statements are proven to be incorrect.