

# **SANTA FE COUNTY LEGAL DEPARTMENT**

## **REQUEST FOR PROPOSALS**



### **LEGAL SERVICES**

**RFP No. 2017-0223-LG/MM**

**February 2017**

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## I. ADVERTISEMENT

### SANTA FE COUNTY LEGAL SERVICES RFP No. 2017-0223-LG/MM

Santa Fe County requests proposals from licensed and qualified attorneys to perform legal services for Santa Fe County in a wide range of practice areas. All proposals submitted shall be valid for 90 days subject to action by the County. Santa Fe County reserves the right to reject any and all proposals in part or in whole. A completed proposal shall be submitted in a sealed container indicating the proposal title and number along with the Offeror's name and address clearly marked on the outside of the container. **All proposals must be received by 2:00 PM (MST) on Tuesday, March 14, 2017, at the Santa Fe County Purchasing Division, 142 W. Palace Avenue (Second Floor), Santa Fe, NM 87501.** By submitting a proposal for the requested services each Offeror is certifying that its proposal complies with regulations and requirements stated within the Request for Proposals.

**A Pre-Proposal Conference will be held on February 22, 2017 at 2:00PM (MST) at the Santa Fe County Purchasing Division, 142 W. Palace Avenue (Second Floor), Finance Conference Room, Santa Fe, NM 87501. The Pre-Proposal conference is not mandatory but attendance is strongly encouraged. Tele-conferencing will be available by calling 1-877-820-7831 and utilize passcode 445752.**

EQUAL OPPORTUNITY EMPLOYMENT: All Offerors will be considered without regard to race, color, religion, sex, national origin, ancestry, age, physical and mental handicap, serious mental condition, disability, spousal affiliation, sexual orientation or gender identity.

Request for proposals will be available by contacting Maricela Martinez, 142 W. Palace Avenue (Second Floor), Santa Fe, New Mexico 87501, by telephone at (505) 992-9864 or by email at [mcmartinez@santafecountynm.gov](mailto:mcmartinez@santafecountynm.gov) or on our website at [http://www.santafecountynm.gov/asd/current\\_bid\\_solicitations](http://www.santafecountynm.gov/asd/current_bid_solicitations)

**PROPOSALS RECEIVED AFTER THE DATE AND TIME SPECIFIED ABOVE WILL NOT BE CONSIDERED AND WILL BE REJECTED BY SANTA FE COUNTY.**

Santa Fe County  
Purchasing Division  
Publish: February 13, 2017

## II. CONTRACT OBJECTIVES

### A. PURPOSE OF THIS REQUEST FOR PROPOSAL

Santa Fe County requests proposals from qualified law firms and attorneys to provide general legal counsel and representation in the following practice areas: Environmental law; Water law, including water rights acquisition and disposition; Labor law; Employment law; Appellate practice; Condemnation, both inverse and direct; quiet title actions, and actions to have prescriptive easements declared; Land use and land use planning; Adult and juvenile detention facility operations and procedures; Health care, including health information privacy; Insurance coverage and the procurement of insurance coverage, including an analysis of competing policies and gap analysis to determine additional coverage needed; Defense of tort claims, with particular emphasis on claims arising under the New Mexico Tort Claims Act, and civil rights claims; Issues arising under the Rules of Professional Conduct; Transactions, such as real estate acquisitions and dispositions, asset acquisitions, and Local Economic Development Act transactions, including experience with debt and other restrictions on governmental contracts; Federal and state taxation; Civil and criminal litigation and appeals, including commercial litigation, Inspection of Public Records Act litigation, Open Meetings Act litigation, mandamus and injunctive relief, and resisting civil and criminal discovery demands directed to the County as a non-party; Procurement and governmental contracting, with a particular emphasis on design professional, construction, and medical professional contract drafting and litigation; Public water and wastewater utilities, with particular emphasis on experience in drafting operation and cost-sharing agreements with respect to utility facilities owned by an entity created pursuant to the Joint Powers Agreement Act or similar private or public entity as described below with regard to the implementation of the Aamodt Litigation Settlement Agreement; and Bankruptcy, with a particular emphasis on property taxes; and Non-Bond Financing and Special Districts, such as Public Improvement Districts, County Improvement Districts, and Tax Incentives for Development Districts.

An Offeror does NOT have to have experience in all of these areas of the law to be considered, as this is a multiple source award solicitation. This means that the County will be awarding contracts to multiple Offerors to provide legal services in specified practice areas. Offerors must specify in their proposals in which practice areas they propose to provide legal services to the County.

Certain services will be provided in connection with the implementation of the Settlement Agreement in the so-called Aamodt Litigation, a water rights adjudication styled *State of New Mexico, ex rel. State Engineer and United States of America, Pueblo de Nambe, Pueblo de Pojoaque, Pueblo de San Ildefonso, and Pueblo de Tesuque v. R. Lee Aamodt, et al.*, No. 66 CV 6639 MV/LCS (D.N.M.). The Settlement Agreement calls for the design, construction, and operation of a Regional Water System that will divert water from the Rio Grande, treat it, and transmit and distribute it through the separate distribution systems of the County and four Pueblos who are parties to the Aamodt

Litigation and Settlement Agreement. The Regional Water System will be designed and constructed by the federal Bureau of Reclamation and its contractors. Legal services will be needed to ensure that the County's interests are protected in the Bureau of Reclamation's contracts.

The Regional Water System will be operated and common elements owned by the Pojoaque Basin Regional Water Authority ("Authority"), an entity to be created by a Joint Powers Agreement between the County and four Pueblos. The County and Pueblos must negotiate an Operating Agreement that establishes how the Regional Water System will be operated and the costs of the system shared. Finally, the County may negotiate a System Operator Agreement with the Authority, pursuant to which the County agrees to operate the Regional Water System as a contractor of the Authority. Legal services will be required in connection with these significant agreements, some of which are expected to be perpetual. Finally, the County may have to seek judicial declarations of its prescriptive easement rights with respect to County roads, the rights of way for which are to be used to construct the Regional Water System. Alternatively, the County may need to purchase or condemn such rights of way.

In addition, a contractor will also represent the County in the Aamodt Litigation.

The Settlement Agreement, draft JPA, federal act approving the settlement agreement, and Cost-Sharing and System Integration Agreement are included in the Procurement Library.

**B. SCOPE OF WORK**

The selected contractor or contractors will provide the following legal services:

1. Legal services on matters as directed by the Santa Fe County Attorney.
2. Legal representation of Santa Fe County before state and federal courts, state agencies and other governmental entities.
3. Legal assistance with mediation, arbitration, and litigation involving Santa Fe County.
4. As directed by the Santa Fe County Attorney, brief County officials, employees, legal counsel and consultants. The contractor(s) shall also participate in consultations with County officials, employees and consultants on questions of federal and state law which impact the County.

**C. IMPLEMENTATION OF A CONTRACT**

It is the intent of Santa Fe County to make multiple awards to qualified attorneys or legal firms:

1. The term of a contract will not exceed four years.
2. When a multiple source award is made by Santa Fe County, at its sole discretion, the County will determine what projects, cases and matters are assigned to a the contractor. Separate contracts may be awarded to different attorneys or firms who possess the relevant required expertise or legal specialty depending on the needs of Santa Fe County.
3. Where multiple Contractors are contractually able to represent the County in a particular practice area, the County may, in its discretion, require Contractors to submit proposals with respect to a specific matter. The purpose of such proposals is to enable the County to assess the Contractors' then current capacity and capabilities against the requirements of the specific matter, so that the County can determine which Contractor is best suited to represent the County on the matter in a cost effective way. Such requests may require the Contractor to estimate the cost of the services requested based upon the hourly rates established in the contract.
4. The Santa Fe County Attorney will provide program and operational support and direction for all assigned projects. The County reserves the right to review or modify the scope of services for a project including the not-to-exceed compensation to be paid to the contractor or contractors.

D. QUALIFICATIONS

Lawyers providing services to the County must not be disbarred or suspended from practice in any jurisdiction and must be authorized to provide the requested services in accordance with Rule 16-505 NMRA.

E. INSURANCE REQUIREMENTS

See contract template (Appendix E).

F. PROCUREMENT MANAGER

The County has designated a Procurement Manager who is responsible for the conduct of this procurement whose name, address and telephone number is listed below. All deliveries via express carrier should be addressed as follows:

Maricela Martinez, Procurement Specialist Senior  
Santa Fe County Purchasing Division  
142 W. Palace Avenue (Second Floor)  
Santa Fe, New Mexico 87501  
Phone (505) 992-9864  
Fax (505) 989-3243  
[mcmartinez@santafecountynm.gov](mailto:mcmartinez@santafecountynm.gov)

Any inquiries or requests regarding this procurement should be submitted to the Procurement Manager in writing. Offerors may contact ONLY the Procurement Manager regarding the procurement. Other County employees do not have the authority to respond on behalf of the County.

G. DEFINITION OF TERMINOLOGY

This section contains definitions and abbreviations that are used throughout this procurement document.

“BCC” means the Santa Fe County Board of County Commissioners

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

“Contract” or “Agreement” means a written agreement that states the terms of the contractor’s performance of legal services.

“Contractor” means a successful Offeror who enters into a contract.

“County” means Santa Fe County.

“Determination” means the written documentation of a decision by the Procurement Manager including findings of fact supporting a decision. A determination becomes part of the procurement file.

“Desirable” The terms “may”, “can”, “should”, “preferably”, or “prefers” identify a desirable or discretionary item or factor (as opposed to “mandatory”).

“Evaluation Committee” means a body appointed by the County to perform the evaluation of proposals.

“Finalist” is defined as an offeror who meets all the mandatory specifications of this RFP and whose score on the evaluation factors merits further consideration by the Evaluation Committee.

“Mandatory” The terms “must”, “shall”, “will”, “is required”, or “are required”, identify a mandatory item or factor (as opposed to “desirable”). Failure to meet a mandatory item or factor will result in the rejection of the Offeror’s proposal.

“Offeror” is any person, corporation, or partnership who submits a proposal.

“Procurement Manager” means the person or designee authorized by the County to manage or administer a procurement requiring the evaluation of competitive sealed proposals.



“Purchasing Division” means the Santa Fe County Purchasing Division, Administrative Services Department.

“Request for Proposals” or “RFP” 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 its 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 RFP.

“Responsive Offer” or “Responsive Proposal” means an offer or proposal which conforms in all material respects to the requirements set forth in the RFP. Material respects of an RFP include price, quality, and quantity or delivery requirements.

### III. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule for the procurement, describes the major procurement events and the conditions governing the procurement.

#### A. SEQUENCE OF EVENTS

The Procurement Manager will adhere to the following schedule:

	<u>Action</u>	<u>Responsibility</u>	<u>Date</u>
1.	Issue the RFP	Purchasing Division	Feb.13, 2017
2.	Pre-Proposal Conference (if applicable)	Owner/Purchasing Offerors	Feb. 22, 2017
3.	Acknowledgement Form Due	Offerors	Feb. 22, 2017
4.	Deadline to Submit Questions	Offerors	Feb. 28, 2017
5.	Response to Written Questions	Purchasing Division	March 1, 2017
6.	Submission of Proposal (2:00 PM MST)	Offerors	March 14, 2017
7.	Proposal Evaluation	Evaluation Committee	March. 15, 2017 thru March 17, 2017
8.	Selection of Finalists (if applicable)	Evaluation Committee	March 2017
9.	Best and Final Offers from Finalists (if applicable)	Offeror	March 2017
10.	Oral Presentation by Finalists (if applicable)	Offeror	March 2017
12.	Finalize Contract	County, Offeror	March 2017
13.	Contract Award	Purchasing Division	March, 2017

Note: If the Legal Services Evaluation Committee makes a selection at the Selection of Finalists events 8-10 will not apply.

B. EXPLANATION OF EVENTS

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

1. Issue RFP

This RFP is being issued by the Santa Fe County Legal Department and the Purchasing Division.

2. Pre-Proposal Conference, if applicable

A Pre-Proposal Conference is scheduled to occur on the date indicated in the Sequence of Events at Section III.A. Questions may be submitted at the Pre-Proposal Conference and until the date indicated in the Sequence of Events at Section III.A. A public log will be kept of the names of potential Offerors that attend the Pre-Proposal conference.

3. Acknowledgement of Receipt Form Due

Potential Offerors should hand-deliver, return by facsimile or e-mail the "Acknowledgement of Receipt Form" provided in Appendix A to have its name and firm placed on the procurement distribution list. The form should be signed by an authorized representative of the Offeror, firm or organization, dated and returned by close of business on **February 22, 2017**.

The procurement distribution list will be used for the distribution of written responses to questions and any RFP addenda.

4. Deadline to Submit Written Questions

Potential Offerors may submit written questions regarding this RFP until the close of business on the date indicated in the Sequence of Events at Section III.A. All written questions must be addressed to the Procurement Manager, listed in Section II, Paragraph E and sent by facsimile or e-mail. ***Any contact with any other County staff member other than the Procurement Manager named in this solicitation will be grounds for rejection of a proposal.***

5. Response to Written Questions

Written responses to written questions and any RFP addenda will be distributed on the date indicated in the Sequence of Events at Section III.A, to all potential Offerors whose name appears on the procurement distribution list.

Additional written requests for clarification of answers or addenda must be received by the Procurement Manager no later than one day after the answers or addenda were issued.

6. Submission of Proposal

**ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 2:00 PM (MOUNTAIN STANDARD TIME) ON MARCH 14, 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 II, D. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to RFP No. 2017-0223-LG/MM. Proposals submitted by facsimile or other electronic means will not be accepted. Proposals must be delivered to:

Maricela Martinez, Procurement Specialist Senior  
Santa Fe County Purchasing Division  
142 W. Palace Avenue (Second Floor)  
Santa Fe, New Mexico 87501

A public log will be kept of the names of all Offeror's who submit proposals. Pursuant to NMSA 1978, Section 13-1-116, the contents of any proposal shall not be disclosed so as to be available to competing Offerors during the negotiation process.

7. Proposal Evaluation

The evaluation of proposals will be performed by an Evaluation Committee appointed by the Procurement Manager. This process will take place during the timeframe indicated in the Sequence of Events at III.A. During this time, the Procurement Manager may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying the Offeror's proposal. A proposal may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by Offerors.

8. Selection of Finalists (If applicable)

The Evaluation Committee may select and the Procurement Manager may notify the finalist Offerors on the date indicated in the Sequence of Events at Section III.A. Only finalists will be invited to participate in the subsequent steps of the procurement if the finalist process is used.

9. Best and Final Offers from Finalists (If applicable)

Finalist may be asked to submit revisions to their proposals for the purpose of

obtaining best and final offers by the date indicated in the Sequence of Events at Section III.A.

10. Oral Presentation by Finalists (If applicable)

Finalist Offerors may be required to present their proposals to the Evaluation Committee. The Procurement Manager will schedule the time for a presentation. All offeror presentations will be held at the Santa Fe County Purchasing Division, 142 W. Palace Avenue (Second Floor), Santa Fe, New Mexico. Each presentation will be limited to one hour.

11. Finalize Contract

The contract will be finalized with the most advantageous Offeror during the timeframe indicated in the Sequence of Events at Section III.A. In the event that mutually agreeable terms cannot be reached within the time specified, the County reserves the right to finalize a contract with the next most advantageous Offeror without undertaking a new procurement process.

12. Contract Award

The County anticipates awarding the contract on the date in the Sequence of Events at Section III.A. These dates are subject to change at the discretion of the Santa Fe County Purchasing Manager.

The contract shall be awarded to the Offeror or Offerors whose proposal is most advantageous to the County, taking into consideration the evaluation factors set forth in the RFP. The most advantageous proposal may or may not have received the most points.

13. Right to Protest

Any protest by an Offeror must be timely and in conformance with NMSA 1978, Section 13-1-172 and applicable procurement regulations. Protests must be written and must include the name and address of the protestor and the request for proposals number. It must also contain a statement of grounds for protest including appropriate supporting exhibits. The protests must be delivered to the Santa Fe County Purchasing Division:

Santa Fe County  
Attn: Procurement Office  
P.O. Box 276  
Santa Fe, New Mexico 87504

Protests will not be accepted by facsimile or other electronic means. Protests received after the deadline will not be accepted.

C. GENERAL REQUIREMENTS

This procurement will be conducted in accordance with Chapter 13, NMSA 1978, NMAC 1.4.1 and the Santa Fe County Procurement Regulations.

1. Acceptance of Conditions Governing the Procurement

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 terms and conditions of the contract template attached as Appendix E.

2. Incurring Cost

Any costs incurred by an Offeror in preparation, transmittal, presentation of any proposal or material submitted in response to this RFP shall be paid solely by the Offeror.

3. Prime Contractor Responsibility

Any contract that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of the contract with the County. The County will make payments to only the prime contractor.

4. Subcontractors

Use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name. The prime contractor shall be wholly responsible for the performance of the contract with the County whether or not subcontractors are used.

5. Amended Proposals

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

6. Offerors' 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 signed by the Offeror's duly authorized representative addressed to the Procurement Manager. The approval or denial of withdrawal requests received

after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

7. Proposal Offer Firm

Responses to this RFP, including proposal prices, will be considered firm for 90 days after the due date for receipt of proposals or 90 days after receipt of a best and final offer if one is submitted.

8. Disclosure of Proposal Contents

Proposals shall not be opened publicly and shall not be open to public inspection until after a contractor is selected and a contract is awarded.

An Offeror may request in writing non-disclosure of confidential data. Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. Confidential data is normally restricted to confidential financial information concerning the Offeror's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, 57-3A-1 to 57-3A-7, NMSA 1978. The price of services or products 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 Procurement Manger 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 prohibition on the disclosure of confidential data.

9. No Obligation

This procurement in no manner obligates Santa Fe County or any of its departments to the use of any proposed professional services until a written contract is awarded and approved by the 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 County determines such action to be in the best interest of the County

11. Sufficient Appropriation

Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such termination will be

effected by sending written notice to the contractor. The County's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor(s) as final.

12. Legal Review

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

13. Governing Law

This procurement and any agreement with Offerors that may result shall be governed by the laws of the State of New Mexico.

14. Basis for Proposal

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

15. Contract Terms and Conditions

The contract between the County and the contractor or contractors will contain the terms described in Appendix E.

16. Contract Deviations

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

17. Offeror Qualifications

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

18. Right to Waive Minor Irregularities

The Evaluation Committee reserves the right to waive minor technical irregularities. This right is at the sole discretion of the Evaluation Committee subject to the Procurement Manager's approval.



19. Change in Contractor Representatives

The County reserves the right to require a change in contractor representatives if the assigned representatives are not, in the opinion of the County, meeting the County's needs adequately. Any change in contractor representative must receive prior County approval.

20. Notice

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

21. County Rights

The County reserves the right to accept all or a portion of a proposal.

22. Right to Publish

Throughout the duration of this procurement process and contract term, potential Offerors and the contractor or contractors must secure from the County written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement or the subsequent contract. Failure to adhere to this requirement may result in disqualification of a proposal or termination of the contract.

23. Ownership of Proposals

All documents submitted in response to this Request for Proposals shall become the property of the County. However, any technical or user documentation submitted with the proposals of non-selected offerors shall be returned after the expiration of the protest period.

24. Electronic Mail Address Recommended

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). It is recommended that the Offerors have a valid e-mail address to receive e-mail correspondence.

25. Preferences in Procurement by Santa Fe County

***A. New Mexico In-state Preference.***

New Mexico law, NMSA 1978, Section 13-1-22, provides a preference in the award of a public works contract for an in-state resident business.

Application of a resident business preference for any Offeror requires the Offeror to provide a copy of a valid and current certificate as a resident business. Certificates are issued by the state taxation and revenue department.

If an Offeror submits with its proposal a copy of a valid and current in-state resident business certificate, 5% of the total weight of all evaluation factors used in the evaluation of proposals may be awarded or added to the Offeror's score.

Certification by the department of taxation and revenue for the resident business takes into consideration such activities as the business' payment of property taxes or rent in the state and payment of unemployment insurance on employees who are residents of the state.

OR

**B. *New Mexico Resident Veteran Preference.***

New Mexico law, NMSA 1978, Section 13-1-22, provides a preference in the award of a public works contract for a resident veteran business. Certification by the department of taxation and revenue for the resident veteran business requires the Offeror to provide evidence of annual revenue and other evidence of veteran status.

An Offeror who wants the veteran business preference to be applied to its proposal is required to submit with its proposal the certification from the department of taxation and revenue and the sworn affidavit attached hereto as Appendix C.

If an Offeror submits with its proposal a copy of a valid and current veteran resident business certificate, 10%, 8% or 7% of the total weight of all the evaluation factors used in the evaluation of proposals may be awarded or added to the Offeror's score, depending on the business' annual revenue.

The resident business preference is not cumulative with the resident veteran business preference.

AND

**B. *Santa Fe County Preference***

Santa Fe County Ordinance 2012-4 provides for a **County preference** for a Santa Fe County business. Application of the County preference in procurement requires an Offeror to obtain and provide a Santa Fe County Business Certificate issued by the Procurement Manager. Certification by

the Procurement Manager takes into consideration the business' corporate standing in the state, business licensure or registration, the duration of the business' primary office location and the payment of taxes.

If an Offeror submits with its proposal a copy of its Santa Fe County Business Certificate issued by the Purchasing Manager, 5% of the total weight of all the evaluation factors used in the evaluation of proposals may be awarded to the Offeror's score.

The in-state, veteran or County preferences do not apply to procurement of services or goods involving federal funds or federal grant funds.

Additional information about obtaining the certificate as a resident contractor and resident veteran contractor may be found at: <http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx> and information about the Santa Fe County business Certificate [http://www.santafecountynm.gov/ordinances\\_and\\_resolutions](http://www.santafecountynm.gov/ordinances_and_resolutions) (Quicklink Ordinances and Resolutions).

26. Double-Sided Documents

All submitted bids/proposal documents shall be double-sided, pursuant to Santa Fe County Resolution 2013-7, Adopting Sustainable Resource Management Principles, Section 2. A. Waste Reduction and Reuse..." all documents are to be double-sided, including those that are generated by outside entities using County funds and by consultants and contractors doing business with the County".

27. Living Wage

Contractor shall comply with the requirements of Santa Fe County Ordinance No. 2014-1 (Establishing a Living Wage).

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#### IV. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF PROPOSALS

An Offeror shall submit one proposal in response to this RFP.

B. NUMBER OF COPIES

Offerors shall deliver one original and five copies of their proposal to the location specified in Section II, Paragraph F on or before the closing date and time for receipt of proposals.

C. PROPOSAL FORMAT

All proposals shall be limited to 15 pages, with the exception of professional licenses and certifications, which shall be attached to a proposal as appendices. Proposals shall be typewritten on 8 ½" x 11" paper, with a font no smaller than 12 pt. pitch, 1" margins and normal line spacing. Proposals shall be placed within a binder with tabs delineating each section.

1. Proposal Organization

Proposals must be organized and indexed in the following format and must contain the following items in the order listed:

- a) Letter of transmittal,
- b) Table of contents,
- c) Proposal summary (optional),
- d) Response to Specifications – Evaluation Factors
- e) A separate cost proposal in a separate sealed envelope (Appendix D)
- f) A signed Campaign Contribution Disclosure Statement.

Within each section of a proposal, Offerors should address the items in the order in which they appear in this RFP under Section V. Paragraph B. EVALUATION FACTORS. All forms provided in the RFP must be thoroughly completed and included in the appropriate section of the proposal.

***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 Offerors to provide the Evaluation Committee with an overview of the technical and business features of the proposal; however, this material will not be used in the evaluation process unless specifically referenced in other portions of the Offeror's proposal.

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

2. Letter of Transmittal

Each proposal must be accompanied by a letter of transmittal. The letter of transmittal must:

- a) Identify the Offeror and indicate whether the Offeror is an individual attorney, law firm or other organization;
- b) Identify the name and title of the person authorized by the organization to contractually obligate the organization;
- c) Identify the name, title and telephone number of the person authorized to negotiate the contract on behalf of the organization;
- d) Identify the names, titles and telephone numbers of persons to be contacted for clarification;
- e) Expressly indicate Acceptance of the Conditions Governing the Procurement stated in Section III, Paragraph C.1;
- f) Be signed by the person authorized to contractually obligate the organization;
- g) Acknowledge receipt of any and all amendments to this RFP;
- h) Contain an affirmative representation that the attorneys that are proposed to provide services under the contract have never been disciplined, suspended, disbarred, or had a pro hac vice admission revoked in any jurisdiction; and
- i) Acknowledge and acceptance of the terms and conditions of the Agreement attached as Appendix E.

THIS SECTION LEFT INTENTIONALLY BLANK

## V. SPECIFICATIONS

Offerors should respond in the form of a thorough narrative to each mandatory specification. The narratives along with required supporting materials will be evaluated and awarded points accordingly.

### A. INFORMATION

#### Time Frame

The contracts are scheduled to begin in or around April 1, 2017. The County intends to award a contract with an initial one-year term with the option to extend the term. No contract term shall exceed a total of four years.

### B. EVALUATION FACTORS

#### 1. Experience

a. Offerors must identify their experience and duration of practice in one or more of the following areas of law:

- 1) Environmental law;
- 2) Water law, including water rights acquisition and disposition;
- 3) Labor law;
- 4) Employment law;
- 5) Appellate practice;
- 6) Condemnation, both inverse and direct, quiet title actions, and actions to have prescriptive easements declared;
- 7) Land use and land use planning;
- 8) Adult and juvenile detention facility operations and procedures;
- 9) Health care, including health information privacy;
- 10) Insurance coverage and the procurement of insurance coverage, including an analysis of competing policies and gap analysis to determine additional coverage needed;
- 11) Defense of tort claims, with particular emphasis on claims arising under the New Mexico Tort Claims Act, and civil rights claims;
- 12) Issues arising under the Rules of Professional Conduct;
- 13) Transactions, such as real estate acquisitions and dispositions, asset acquisitions, and Local Economic Development Act transactions, including experience with debt and other restrictions on governmental contracts;
- 14) Federal and state taxation,
- 15) General civil and criminal litigation and appeals, including commercial litigation, Inspection of Public Records Act litigation, Open Meetings Act litigation, mandamus and injunctive relief, and resisting civil and criminal discovery demands directed to the County as a non-party;
- 16) Procurement and governmental contracting, with a particular emphasis on

design professional, construction, and medical professional contract drafting and litigation,

- 17) Public water and wastewater utilities, with particular emphasis on experience in drafting operation and cost-sharing agreements with respect to utility facilities owned by an entity created pursuant to the Joint Powers Agreement Act or similar private or public entity; and
- 18) Bankruptcy, with a particular emphasis on property taxes; and Non-Bond Financing and Special Districts, such as Public Improvement Districts, County Improvement Districts and Tax Incentives for Development Districts .

Offerors are not expected to have extensive experience or specialize in all the above-listed areas of practice or to submit a proposal requesting consideration in all areas. Offerors must indicate which area or areas they want to be considered for and the Offeror's response must focus and discuss those areas of expertise or specialty.

With respect to each practice area, Offerors should describe both their counseling and litigation experience.

Representative clients and matters must be included.

Offerors must identify the key personnel whose time or services the Offeror will likely bill as part of the Offeror's services to the County and describe their specific qualifications and capabilities. Offeror must submit a resume for all such personnel that, at a minimum, provides the following:

## 2. Capacity and Ability to Provide Legal Services Efficiently

Offerors must identify their or their firm's approach to providing and managing legal services for the County and the firm's capacity to provide timely services or complete tasks on short notice. Offerors must provide information that demonstrates the ability to provide sufficient professional competence, meet time schedules, accommodate cost considerations and project administration requirements. Indicate the relationship of the services requested in this RFP to other current projects/contracts the Offeror or firm may be involved in, including identification of legal services being provided for other clients that may create conflicts of interest with the Offeror's services for the County.

Offerors must address how they will provide high-quality and efficient legal services. For example, how they will use staffing, use of paraprofessionals, technology, and banks of briefs and other legal products to keep costs down.

## C. Cost Proposal (Appendix D)

Provide in a separate sealed envelope firm, fixed, fully loaded hourly rates for each category of professional and paraprofessional whose time will be billed to the County for services rendered. Hourly rates should not include New Mexico gross receipts tax, which shall be shown separately on the contractor's payment invoices.

The cost proposal must also include a list of all charges and expenses that will be charged to the County, such as telephone charges, electronic research charges, meals, and travel, and how those charges will be priced and billed.

Costs will not be considered in deciding whether to award a contract. Costs will, however, be considered when assigning work under awarded contracts. In other words, if two or more Contractors are both capable of providing the legal services necessary to meet the County’s needs, the County may assign the work to the lower cost firm. Accordingly, Offerors should propose their best rates.

**VI. EVALUATION**

**A. EVALUATION SCORING**

The Evaluation Committee will evaluate the content and substance of the Offeror’s response to each evaluation factor and assign a numerical score not to exceed the maximum allowed score for that factor. The amount of discussion for each factor is an individual choice of the Offeror; however, discussion should be detailed enough to inform and educate the Evaluation Committee.

Proposals will be scored based upon the Evaluation Committee’s review and consideration of the Offeror’s response to each Evaluation Factor.

- 1. Experience,..... **650 points**
- 2. Capacity and Ability to Provide Legal Services Efficiently ..... **350 points**
  
- TOTAL POINTS..... 1000 points**

**PREFERENCES**

If a proposal contains New Mexico Resident Business Certificate or New Mexico Resident Veterans Business Certificate and/or Santa Fe County Business Certificate, the applicable preference will be applied.

- 3. Proposal contains a valid N.M. Resident Business Certificate.....**50 points**

**OR**

- 4. Proposal contains valid N.M. Resident Veteran Business Certificate...**70, 80 or 100 points**

**AND**

- 5. Proposal contains a valid Santa Fe County Business Certificate..... **50 points**



B. EVALUATION PROCESS

The evaluation process will follow the steps listed below:

1. All proposals will be reviewed for compliance with the mandatory 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 III, Paragraph B.7.
3. The Evaluation Committee may use other sources of information to perform the evaluation as specified in Section III, Paragraph C.18.
4. Responsive proposals will be evaluated using the factors in Section V. The responsible Offerors with the highest scores will be selected as finalist Offerors based upon the proposals submitted. Finalist Offerors who are asked or choose to submit revised proposals for the purpose of obtaining best and final offers will have their points recalculated accordingly. The responsible Offeror whose proposal is most advantageous to the County, taking into consideration the evaluation factors in Section VI, will be recommended for contract award as specified in Section III, Paragraph B.12. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

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**APPENDIX A**

**ACKNOWLEDGEMENT OF RECEIPT FORM  
RFP No. 2017-0223-LG/MM  
LEGAL SERVICES**

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

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than close of business on *February 22, 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 County's 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 Proposals.

Maricela Martinez, Procurement Specialist Senior  
Santa Fe County Purchasing Division  
142 W. Palace Avenue (Second Floor)  
Santa Fe, New Mexico 87501  
(505) 992-9864  
(505) 989-3243  
[mcmartinez@santafecountynm.gov](mailto:mcmartinez@santafecountynm.gov)

## APPENDIX B

### CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

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

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

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

The following definitions apply:

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

**“Campaign Contribution”** means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official’s behalf for the purpose of electing the official to statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

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

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

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

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

Name(s) of applicable public official(s) if any: \_\_\_\_\_  
(Completed by State Agency or Local Public Body)

**DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:**

Contribution Made By: \_\_\_\_\_

Relation to Prospective Contractor: \_\_\_\_\_

Date Contribution(s) Made: \_\_\_\_\_

Amount(s) of Contribution(s) \_\_\_\_\_

Nature of Contribution(s) \_\_\_\_\_

Purpose of Contribution(s) \_\_\_\_\_  
\_\_\_\_\_

(Attach extra pages if necessary)

\_\_\_\_\_  
Signature                      Date

\_\_\_\_\_  
Title (position)

**--OR--**

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

\_\_\_\_\_  
Signature                      Date

\_\_\_\_\_  
Title (Position)

**APPENDIX C**  
**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 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 \$5M allowing me the 7% preference discount on this solicitation. 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, which 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 of 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 un-award of the procurement involved if the statements are proven to be incorrect.

SIGNED AND SEALED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:  
\_\_\_\_\_

**APPENDIX D**

**COST PROPOSAL**

Provide in a *separate sealed envelope* firm, fixed hourly rates that include costs for: travel to and from the off-site workplace to the on-site workplace, per diem, fringe benefits, incidentals and any other overhead costs for Offeror and Offeror’s personnel. Hourly rates should not include New Mexico gross receipts tax which shall be shown separately on the contractor’s payment invoices.

<u>Staff Member</u>	<u>Hourly Rate</u>
Senior Partner	\$ _____
Consultants	\$ _____
Partners	\$ _____
Associates	\$ _____
Law Clerks	\$ _____
Paralegals	\$ _____
Clerical	\$ _____
Travel (mileage)	\$ _____
Copies or document reproduction:	\$ _____
Other (please describe in detail)	\$ _____



## APPENDIX E

### PROFESSIONAL SERVICES AGREEMENT WITH \_\_\_\_\_ FOR LEGAL SERVICES

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by and between **Santa Fe County**, hereinafter referred to as the “County” and \_\_\_\_\_, a \_\_\_\_\_ providing legal services with its principal place of business located at \_\_\_\_\_, hereinafter referred to as the “Contractor”.

**WHEREAS**, the County requires legal assistance on matters as directed by the County Attorney; and

**WHEREAS**, pursuant to NMSA 1978, Sections 13-1-112 and 13-1-153 of the Procurement Code, a request for proposals was issued for a multiple source award for legal services was completed through RFP No. 2017- 0223-LG/MM; and

**WHEREAS**, the County requires the services of the Contractor and the Contractor is willing to provide these services and both parties wish to enter into this Agreement.

**NOW, THEREFORE**, it is agreed between the parties:

#### 1. SCOPE OF WORK

Contractor shall render legal services as directed by the Santa Fe County Attorney or the County Attorney’s designee in the following areas. Such legal services may include without limitation:

- A. Legal research and advice on County ordinances and resolutions, proposed legislation, County policies and procedures, County contracts and other agreements, and County procurements, including the drafting of same;
- B. Legal representation of Santa Fe County in state and federal courts and before federal and state agencies and other governmental entities;
- C. Legal assistance with mediation, arbitration, or litigation involving Santa Fe County;
- D. As directed by the County Attorney, brief County officials, employees, legal counsel, and consultants. Contractor shall also participate in consultations with County officials, employees, and consultants on questions of federal and state law which impact the County; and
- E. With the advance approve of the County Attorney, contract or subcontract directly with providers of litigation related services, including, but not limited to, experts,

mediators, court reporters and process servers. The cost or expense of such other litigation related services shall be paid by the County either on a reimbursement basis or after services have been provided but before the Contractor has paid the invoice for the services.

**2. COMPENSATION AND INVOICING**

A. The total compensation to be paid under this Agreement including fees and costs, shall not exceed \$ \_\_\_\_\_, exclusive of NM grt, and paid to the Contractor at the hourly rate of \$ \_\_\_\_\_, exclusive of NM grt.

The County shall pay to the Contractor for reimbursable expenses based on the following:

<u>Staff Member</u>	<u>Hourly Rate</u>
Senior Partner	\$ _____
Consultants	\$ _____
Partners	\$ _____
Associates	\$ _____
Law Clerks	\$ _____
Paralegals	\$ _____
Clerical	\$ _____
Travel (mileage)	\$ _____
Copies or document reproduction:	\$ _____
Other (please describe)	\$ _____

B. The Contractor shall submit a written request for payment to the County once a month. Upon the County’s receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought. The Contractor acknowledges and agrees that County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services. Within 30 days of the issuance of a written certification accepting the contractual items or services, the County shall tender payment for the accepted items or services. In the event the County fails to tender payment within 30 days of the written certification accepting the items or services, the County shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.

C. The County shall reimburse the Contractor reasonable travel expenses. Authorized travel shall be reimbursed at the rate set forth in the Travel and Per Diem Acts, NMSA 1978, Section 10-8-4, et.seq as amended by the County and at the mileage rate set forth in the Per Diem and Mileage Act and DFA Rule 95-1 regulations

governing the Per Diem and Mileage Act. Reimbursement for approved travel expenses shall not exceed \$\_\_\_\_\_.

- D. In the event the Contractor breaches this Agreement, the County may, without penalty, withhold any payments due the Contractor for the purpose of set-off until such time as the County determines the exact amount of damages it suffered as a result of the breach.
- E. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.
- F. With the advance approve of the County Attorney, Contractor may contract or subcontract directly with providers of litigation related services including but not limited to experts, mediators, court reporters and process servers. The cost or expense of such other litigation related services shall be paid by the County either on a reimbursement basis or after services have been provided but before the Contractor has paid the invoice for the services.

### **3. EFFECTIVE DATE AND TERM**

This Agreement shall be effective upon the last date of signature by the parties and shall terminate on \_\_\_\_\_, unless earlier terminated pursuant to Section 5 (Termination) of this Agreement. The term of this Agreement is subject to extension in one-year increments, not to exceed a total term of four years.

### **4. ADDITIONAL SERVICES**

- A. The parties agree that all tasks set forth in Paragraph 1, Scope of Work of this Agreement, shall be completed in full, to the satisfaction of the County, for the amount set forth in Paragraph 2, Compensation and Invoicing of this Agreement, and for no other cost, amount, fee, or expense.
- B. The County may from time to time request changes in the Project's scope of work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the County and the Contractor, shall be incorporated in written amendments to this Agreement.

### **5. TERMINATION**

- A. Termination of Agreement for Cause. Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective 15 days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due

diligence be cured within 15 days, the breaching party shall have a reasonable time to cure the breach, provided that, within ten days of its receipt of the written notice of termination, the breaching party (i) began to cure the breach and (ii) advised the non-breaching party in writing that it intended to cure.

- B. Termination for Convenience of the County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than ten days from the Contractor's receipt of the notice. The County shall pay the Contractor for acceptable work, determined in accordance with the specifications and standards set forth in this Agreement, performed before the effective date of termination and specifically authorized in writing by the County but shall not be liable for any work performed after the effective date of termination or performed without the County's specific written authorization.

## **6. INDEPENDENT CONTRACTOR**

The Contractor and its agents and employees are independent contractors and are not employees or agents of the County. Accordingly, the Contractor and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use County vehicles, or participate in any other benefits afforded to employees of the County. Except as may be expressly authorized elsewhere in this Agreement, the Contractor has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.

## **7. PERSONNEL**

- A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.
- B. The Contractor represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of or have any contractual relationships with the County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

## **8. ASSIGNMENT**

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the advance written approval of the County. Any attempted assignment or transfer without the County's advance written approval shall be null and void and without any legal effect.

## **9. SUBCONTRACTING**

The Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advance written approval of the County. Any attempted

subcontracting or delegating without the County's advance written approval shall be null and void and without any legal effect.

## **10. INDEMNITY**

- A. The Contractor shall defend, indemnify, and hold harmless the County and its Elected Officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) resulting from or directly or indirectly arising out of Contractor's performance or non-performance of its obligations under this Agreement, including but not limited to the Contractor's breach of any representation or warranty made herein.
- B. The Contractor agrees (i) that the County shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that relate to the County and (ii) that such suit will not be settled without the County's consent, such consent not to be unreasonably withheld. If a conflict exists between the interests of the County and the Contractor in such demand, suit, or cause of action, counsel shall be retained to represent the County's interest.
- C. The Contractor's obligations under this section shall not be limited by the provisions of any insurance policy the Contractor is required to maintain under this Agreement.

## **11. RECORDS AND INSPECTIONS**

To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, the Contractor agrees to (i) maintain such books and records during the term of this Agreement and for a period of six years from the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles ("GAAP").

## **12. APPROPRIATIONS AND AUTHORIZATIONS**

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of the County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to the Contractor. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Contractor in any way or forum, including a lawsuit.

**13. PERMITS, FEES, AND LICENSES**

Contractor shall procure all permits and licenses, pay all charges, fees, and royalties, and give all notices necessary and incidental to the due and lawful performance of its obligations hereunder.

**14. RELEASE**

Upon its receipt of all payments due under this Agreement, the Contractor releases the County, its elected officials, officers, agents and employees from all liabilities, claims, and obligations whatsoever arising from or under or relating to this Agreement.

**15. CONFIDENTIALITY**

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

**16. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT**

The County has the unrestricted right to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other material prepared under or pursuant to this Agreement.

**17. CONFLICT OF INTEREST**

The Contractor represents that it has no and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of its obligations under this Agreement.

**18. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED**

This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. The Contractor specifically acknowledges and agrees that the County shall not be responsible for any changes to Section 1, Scope of Work, of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

**19. ENTIRE AGREEMENT; INTEGRATION**

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

## **20. EQUAL OPPORTUNITY COMPLIANCE**

- A. The Contractor agrees to abide by all Federal, State, and local laws, ordinances, and rules and regulations pertaining to equal opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, the Contractor specifically agrees not to discriminate against any person with regard to employment with the Contractor or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.
  
- B. The Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

## **21. SEVERABILITY**

If any term or condition of this Agreement shall be held invalid or non-enforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent of the law.

## **22. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW**

- A. In performing its obligations hereunder, the Contractor shall comply with all applicable laws, ordinances, and regulations.
  
- B. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules.

## **23. NOTICE OF PENALTIES**

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

## **24. NO THIRD-PARTY BENEFICIARIES**

This Agreement was not intended to and does not create any rights in any persons not a party hereto.

## **25. FACSIMILE SIGNATURES**

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

## **26. LIMITATION OF LIABILITY**

The County's liability to the Contractor for any breach of this Agreement by the County shall be limited to direct damages and shall not exceed the maximum amount of potential compensation specified in Section 2, Compensation and Invoicing, of this Agreement. In no event shall the County be liable to the Contractor for special or consequential damages, even if the County was advised of the possibility of such damages prior to entering into this Agreement.

## **27. NEW MEXICO TORT CLAIMS ACT**

No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by County or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, et seq.

## **28. INSURANCE**

General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.

General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,050,000 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. The County of Santa Fe shall be a named additional insured on the policy.

Workers' Compensation Insurance. The Contractor shall comply with the provisions of the Workers' Compensation Act.

Increased Limits. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.

Malpractice/Errors and Omissions Insurance. The Contractor shall procure and maintain during the life of this Agreement professional liability or errors and omissions insurance in amounts not less than \$3 million per occurrence.

## **29. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES**

The Contractor hereby represents and warrants that:



- A. This Agreement has been duly authorized by the Contractor, the person executing this Agreement has authority to do so, and, once executed by the Contractor, this Agreement shall constitute a binding obligation of the Contractor.
- B. This Agreement and Contractor’s obligations hereunder do not conflict with Contractor’s corporate agreement or any statement filed with the Secretary of State on Contractor’s behalf.

**30. SURVIVAL**

The provisions of paragraphs 8, 9, 10, 11, 14, 15, 16, 22, 26, 27 and 28 shall survive termination of this Agreement.

**31. CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

The Contractor agrees to compute and submit simultaneous with execution of this Agreement a Campaign Contribution Disclosure Form approved by the County.

**32. 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 County: Santa Fe County  
 Attn: County Attorney  
 P.O. Box 276  
 102 Grant Avenue  
 Santa Fe, New Mexico 87504-0276

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

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first written above.

**SANTA FE COUNTY:**

\_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
 Gregory S. Shaffer  
 Santa Fe County Attorney

\_\_\_\_\_  
 Date

Finance Department approval:

\_\_\_\_\_  
Don D. Moya  
Finance Director

\_\_\_\_\_  
Date

**CONTRACTOR:**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
(Print Name)

Its: \_\_\_\_\_  
(Print Title)