

**STATE OF NEW MEXICO  
BOARD OF FINANCE**

**REQUEST FOR PROPOSALS (RFP)**

**BOND COUNSEL SERVICES**



**RFP# C20-341-4000-14996**

Issued Date: Monday, December 2, 2019

Response Date: Wednesday, December 18, 2019

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# **I. INTRODUCTION**

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

The New Mexico State Board of Finance (hereinafter referred to as the “SBOF”) hereby requests proposals from responsible Offerors to provide professional legal services as Bond Counsel to the SBOF to effect the issuance and sale of tax-exempt and taxable bonds sold to underwriters and to the State Treasurer and provide advice on other topics on an as-needed basis. In the event the SBOF’s disclosure counsel or tax counsel is unable to perform, the SBOF’s Bond Counsel may also provide services typically performed by a firm serving as disclosure counsel or tax counsel.

## **B. BACKGROUND INFORMATION**

The “SBOF” issues General Obligation Bonds, Severance Tax Bonds, Supplemental Severance Tax Bonds and other bonds. The SBOF also: approves financing plans for bond issues and interest rate exchange agreements of state agencies and instrumentalities, universities and local governments; publishes studies, reports and policies relating to fiscal matters; and has many other responsibilities related to “general supervision of the fiscal affairs of the State” (NMSA 1978, 6-1-1). Members of the SBOF are the Governor, Lieutenant Governor, State Treasurer, four public members appointed by the Governor with the advice and consent of the Senate, and the Cabinet Secretary of the Department of Finance and Administration (DFA), who is a non-voting member.

## **C. SCOPE OF PROCUREMENT**

The initial contract for the prescribed scope of work shall be for a period of four years, effective on April 1, 2020, with a termination date of March 31, 2024. There are no options to extend or renew the contract, as the contract entered into, including any renewals thereof, shall not exceed a total duration of four years. This procurement may result in a multiple source award, in the event a joint proposal from multiple firms is submitted and awarded.

## **D. PROCUREMENT MANAGER**

1. SBOF 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: Ashley E. Leach, Procurement Manager  
Address: 181 Bataan Memorial Building  
407 Galisteo Street  
Santa Fe, NM 87501  
  
Telephone: (505) 827-4902  
Fax: (505) 827-3985  
Email: Ashley.Leach@state.nm.us

2. **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 as properly submitted nor will protests delivered to the Procurement Manager be considered properly submitted.

## **E. DEFINITION OF TERMINOLOGY**

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

“**Agency**” means the State Board of Finance (SBOF).

“**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.

“**Confidential**” means confidential financial information concerning offeror’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act NMSA 1978 57-3-A-1 to 57-3A-7. See NMAC 1.4.1.45. As one example, no information that could be obtained from a source outside this request for proposals can be considered confidential information.

“**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.

“**DFA**” means the New Mexico Department of Finance and Administration.

“**Electronic Version/Copy**” means a digital form consisting of text, images or both readable on computers or other electronic devices that includes all content that the Original and Hard

Copy proposals contain. The digital form may be submitted using a compact disc (cd) or USB flash drive. The electronic version/copy can NOT be emailed.

**“Employer”** means any for-profit or not-for-profit business, regardless of location, that employs one or more persons that qualify as a “New Mexico Employee” (see below). Such definition does not include governmental entities.

**“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 or allowed.

**“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”** means 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.

**“Procurement Distribution List”** means the list of Offerors whom, by returning the most currently required “Acknowledgement of Receipt” form (concerning the latest communication regarding a procurement), wish to continue to be notified of any subsequent changes regarding that procurement. This list is maintained by the Procurement Manager.

**“Procurement Manager”** 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.

**“Redacted”** means a version/copy of the proposal with the information considered confidential as defined by NMAC 1.4.1.45 and defined herein and outlined in Section II.C.8 of this RFP blacked out BUT NOT omitted or removed.

**“Request for Proposals (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 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”** 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.

**“SBOF”** means the New Mexico State Board of Finance.

**“Sealed”** means, in terms of a non-electronic submission, that the proposal is enclosed in a package which is completely fastened in such a way that nothing can be added or removed. Open packages submitted will not be accepted except for packages that may have been damaged by the delivery service itself. The State reserves the right, however, to accept or reject packages where there may have been damage done by the delivery service itself. Whether a package has been damaged by the delivery service or left unfastened and should or should not be accepted is a determination to be made by the Procurement Manager. By submitting a proposal, the Offeror agrees to and concurs with this process and accepts the determination of the Procurement Manager in such cases.

**“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.

**“Statement of Concurrence”** means an affirmative statement from the Offeror to the required specification agreeing to comply and concur with the stated requirement(s). This statement shall be included in Offerors proposal. (E.g. “We concur”, “Understands and Complies”, “Comply”, “Will Comply if Applicable” etc.)

“**STO**” means the New Mexico State Treasurer’s Office

“**Unredacted**” means a version/copy of the proposal containing all complete information including any that the Offeror would otherwise consider confidential, such copy for use only for the purposes of evaluation.

“**Written**” means typewritten on standard 8 ½ x 11 inch paper. Larger paper is permissible for charts, spreadsheets, etc.

## **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:

Offerors are encouraged to review material contained on the SBOF website at [http://www.nmdfa.state.nm.us/Board\\_of\\_Finance.aspx](http://www.nmdfa.state.nm.us/Board_of_Finance.aspx), including past official statements, schedules of outstanding debt and other information. Offerors are also encouraged to review State law as it relates to the SBOF’s bonding programs, including but not limited to the following:

1. Bond Project Disbursements Rule (NMAC 2.61.6);
2. New Mexico constitutional debt limits (Article IX, Section 8);
3. New Mexico constitutional antidonation clause (Article IX, Section 14);
4. The Severance Tax Bonding Act (Chapter 7, Article 27 NMSA 1978);
5. The Water Project Finance Act (Chapter 72, Article 4A NMSA 1978);
6. The Tribal Infrastructure Act (Chapter 6, Article 29 NMSA 1978);
7. The Colonias Infrastructure Act (Chapter 6, Article 30 NMSA 1978); and
8. Related public school finance statutes including the Public School Capital Outlay Act and the Public School Capital Improvements Act (Chapter 22, Articles 24 and 25 NMSA 1978, respectively).

## 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:

<b>Date</b>	<b>Action</b>	<b>Responsible Party</b>
<b>2019</b>		
Tuesday	17-Sep Request Approval to Issue RFP ( <i>BOF Meeting</i> )	BOF Staff
Monday	2-Dec Issue RFP	BOF Staff
Monday	9-Dec Provide Acknowledgement of Receipt of RFP	Potential Offerors
Wednesday	11-Dec Deadline to Submit Written Questions	Potential Offerors
Thursday	12-Dec BOF Response to Written Questions	BOF Staff
Wednesday	18-Dec Submissions Due	Offerors
Thursday	19-Dec	Evaluation Committee
	through Proposal Evaluation	
Thursday	9-Jan	
<b>2020</b>		
Friday	10-Jan Notification of Finalists	BOF Staff
Monday	13-Jan Submission of Best & Final Offers	Finalist Offerors
Thu/Fri	16/17-Jan Oral Presentations (Optional)	Finalist Offerors
Wednesday	22-Jan Request Approval to Enter Contract Negotiations ( <i>BOF Meeting</i> )	BOF Staff
Thursday	23-Jan Begin Contract Negotiations	BOF Staff
Tuesday	18-Feb Request Approval to Award Contract ( <i>BOF Meeting</i> )	BOF Staff
Wednesday	5-Mar Protest Deadline	SPD

## **B. EXPLANATION OF EVENTS**

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

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

This RFP is being issued by the SBOF on the date specified in the Sequence of Events. In the interest of making it easier for Offerors to prepare responses, Offerors can download the RFP in an electronic format by accessing the Board of Finance website at: [http://nmdfa.state.nm.us/Request for Proposals.aspx](http://nmdfa.state.nm.us/Request_for_Proposals.aspx). Additional copies of the RFP can be obtained from the Procurement Manager.

### **2. Acknowledgement of Receipt and Distribution List**

The Acknowledgement of Receipt of Request for Proposal Form is required in order to be considered for the bond counsel contract. Potential Offerors should hand deliver, return by facsimile or registered or certified mail the "Acknowledgement of Receipt of Request for Proposal Form" that accompanies this document, APPENDIX A. The Acknowledgement of Receipt Form will also place the Offeror on the procurement distribution list. The procurement distribution list will be used for the distribution of written responses to questions.

THE ACKNOWLEDGEMENT OF RECEIPT FORM SHOULD BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE ORGANIZATION, DATED AND RETURNED TO THE PROCUREMENT MANAGER NO LATER THAN 3:00 PM MST OR MDT ON DECEMBER 9, 2019. Forms received after this deadline will not be accepted. Failure to return the Acknowledgement of Receipt Form shall result in rejection of the Offeror's proposal. The date and time of receipt will be recorded on each form.

### **3. 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 12:00 pm, December 11, 2019, Mountain Standard Time/Daylight Time as indicated in the sequence of events. All written questions must be addressed to the Procurement Manager as declared in Section I.D. Questions shall be clearly labeled and shall cite the Section(s) in the RFP or other document which form the basis of the question.

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

Written responses to written questions and any RFP amendments will be distributed via email on the date specified in the Sequence of Events to all potential Offerors whose organization's name appears on the Procurement Distribution List. An Acknowledgment of Receipt Form will accompany the distribution package. The form should be signed and dated by the Offeror's representative and returned to the Procurement Manager by hand delivery, email or by registered or certified mail, by the date and time indicated thereon.

Failure to return this form shall constitute a presumption of receipt and withdrawal from the procurement process. Therefore, the Offeror's organization name shall be dropped from the Procurement Distribution List.

## **5. Submission of Proposal**

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 12:00 PM MOUNTAIN STANDARD TIME/DAYLIGHT TIME ON DECEMBER 18, 2019. 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.D.1. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the Request for Proposals for Bond Counsel Services, RFP# C20-341-4000-14996. 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 NMSA 1978, § 13-1-116, 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 SBOF signatures on the contract(s) resulting from the procurement has been obtained.

## **6. Proposal Evaluation**

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

## **7. Selection & Notification of Finalists**

The Evaluation Committee will select and the Procurement Manager will notify the finalist Offerors as per Section II.A, Sequence of Events, or as soon as possible. A schedule for the oral presentation and demonstration will be determined at this time if deemed necessary.

## **8. Best and Final Offers**

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

## **9. Oral Presentations (Optional)**

Finalist Offerors may be required to present their proposals to the Evaluation Committee on the dates specified in the Sequence of Events, which are subject to change. The Procurement Manager may schedule the time for each Finalist Offeror's presentation. All Finalist Offeror presentations will be held in the Bataan Memorial Building, Santa Fe, New Mexico, depending on availability, or another site in Santa Fe, New Mexico, that may be designated by the Procurement Manager. Finalist Offerors should be prepared to explain verbally their understanding of this procurement and be prepared to answer questions concerning it. Each presentation should take approximately one (1) hour. Finalist Offerors are restricted to a maximum of three (3) presenters, one of which **must** be the main client representative who will be assigned to the contract.

## **10. Recommendation to State Board of Finance and Contract Negotiations Approval Request**

The Procurement Manager anticipates presenting its recommendation to the SBOF on the date specified in the Sequence of Events to authorize staff to finalize a Bond Counsel services contract with the most advantageous Offeror, subject to recommendation and signature by the SBOF and execution by the Contracts Review Bureau. This date is subject to change at the discretion of the SBOF.

## **11. Contract Negotiations**

The contract will be finalized with the most advantageous Offeror between the dates specified in the Sequence of Events, which are subject to change at the discretion of the SBOF. In the event that mutually agreeable terms cannot be reached within the time specified, the SBOF reserves the right to cease negotiations with the most advantageous Offeror and proceed to negotiations with the next most advantageous Responsible Offeror(s) in an attempt to finalize a Contract based upon an alternate timetable without undertaking a new procurement process or reserves the right to cancel the RFP.

## **12. Contract Awards**

After review of the Evaluation Committee Report and the signed contractual agreement, the Procurement Manager 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 SBOF Procurement Manager.

The contract shall be awarded to the Offeror (or Offerors) whose proposals are most advantageous to the SBOF, 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**

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 pm Mountain Standard Time/Daylight Time on the 15<sup>th</sup> day. Protests must be written and must include the name and address of the protestor and the request for proposal number. It must also contain a statement of the grounds for protest, including appropriate supporting exhibits, and it must specify the ruling requested from the party listed below. The protest must be delivered to:

Miranda Mascarenas, Deputy Administrative Services Director  
NM State Board of Finance  
Bataan Memorial Building  
407 Galisteo Street  
Room 336  
Santa Fe, NM 87501

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.

### **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 not allowed. Joint proposals from multiple firms are allowed.

#### **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 the 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:
  - Confidential financial information concerning the Offeror's organization.
  - Data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, NMSA 1978 § 57-3A-1 to 57-3A-7.
  - 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 State Purchasing Division or 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's 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 the Sample Contract Appendix C. However, the contracting agency reserves the right to negotiate provisions in addition

to those contained in this RFP (Sample Contract) with any Offeror. The contents of this RFP, as revised and/or supplemented and the successful Offeror's proposal will be incorporated into and become part of any resultant contract.

The Agency discourages exceptions from the contract terms and conditions as set forth in the RFP Sample Contract. Such 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 as set forth in the 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 of the Sample Contract are not acceptable to the Agency and will result in disqualification of the Offeror's proposal.

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

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

## **16. Multiple Contracts**

Pursuant to the direction and decision of the Board of Finance, if an offeror is awarded the contract for bond counsel, that same offeror cannot be awarded a contract for tax counsel or any future contracts that may be awarded during the term of the bond counsel contract, as referenced in Section I.C.

## **17. 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. Please see Section II.C.15 for requirements.

## **18. Contract Deviations**

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

## **19. 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 NMSA 1978, § 13-1-83 and 13-1-85.

## **20. 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.

## **21. 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.

## **22. Notice of Penalties**

The Procurement Code, NMSA 1978, § 13-1-28 through 13-1-199, 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.

## **23. 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.

## **24. 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.

## **25. Ownership of Proposals**

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

## **26. 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.

## **27. 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).

## **28. 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.

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

- A. If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Offeror must agree to have in place, and agree to maintain for the term of the contract, health insurance for those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000.
- B. Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.
- C. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information <https://www.bewellnm.com>.
- D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); these requirements shall apply the first day of the second month after the Offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

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

### **31. Letter of Transmittal**

Offeror's proposal must be accompanied by the Letter of Transmittal Form, located in APPENDIX D, 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. (Note that Section II.C.4 states subcontractors are not permitted for this RFP.)
6. Describe the relationship with any other entity which will be used in the performance of this awarded contract. (Note that Section I.C states joint proposals are allowed.)
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 paragraph 2 above.

### **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) 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 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 State Purchasing Agent 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 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 State Purchasing Agent 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 State Purchasing Agent or Central Purchasing Officer may terminate the involved contract for cause. Still further the State Purchasing Agent or Central Purchasing Officer may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the State Purchasing Agent or Central Purchasing Officer.

### **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 <http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx>.

#### **A. New Mexico Business Preference**

A copy of the certification must accompany your proposal.

#### **B. New Mexico Resident Veterans Business Preference**

A copy of the certification must accompany your proposal.

**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.**

### III. RESPONSE FORMAT AND ORGANIZATION

#### A. NUMBER OF RESPONSES

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

#### B. NUMBER OF COPIES

Offeror's proposal must be clearly labeled and numbered and indexed as outlined in **Section III.C, Proposal Format**. Proposals must be submitted as outlined below. The original copy shall be clearly marked as such on the front of the binder. Each portion of the proposal (technical/cost) must be submitted in separate binders and must be prominently displayed on the front cover. Envelopes, packages or boxes containing the original and the copies must be clearly labeled and submitted in a sealed envelope, package, or box bearing the following information:

Offerors should deliver:

1. **Technical Proposals** – One (1) ORIGINAL, one (1) HARD COPY, and one (1) electronic copy of the proposal containing ONLY the Technical Proposal; ORIGINAL and COPY shall be in separate labeled binders. **The electronic version/copy can NOT be emailed.**
  - 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
2. **Cost Proposals** – One (1) ORIGINAL, one (1) HARD COPY, and one (1) electronic copy of the proposal containing ONLY the Cost Proposal; ORIGINAL and COPY of Cost Proposal shall be in separate labeled binders from the Technical Proposals. **The electronic copy can NOT be emailed.**

The electronic version/copy of the proposal **must** mirror the physical binders submitted (i.e., One (1) **unredacted cd/usb**, one (1) **redacted cd/usb**). **The electronic version can NOT be emailed.**

The original, hard copy and electronic copy information **must** be identical. In the event of a conflict between versions of the submitted proposal, the Original hard copy shall govern.

Any proposal that does not adhere to the requirements of this Section and **Section III.C.1, Response Content and Organization**, may be deemed non-responsive and rejected on that basis.

## C. PROPOSAL FORMAT

All proposals must be submitted as follows:

Hard copies must be typewritten on standard 8½x11-inch paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within binders with tabs delineating each section.

Organization of folders/envelopes for hard copy proposals and electronic copy proposals:

### 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 (see Appendix D)
- B. Table of Contents
- C. Proposal Summary (Optional)
- D. Response to Contract Terms and Conditions
- E. Offeror's Additional Terms and Conditions
- F. Response to Specifications (**except cost information which shall be included in Cost Proposal/Binder 2 only**)
  1. Organizational Experience
  2. Organizational References (see Appendix E)
  3. Mandatory Specification
  4. Desirable Specification
  5. Financial Stability - Financial information considered confidential should be placed in the **Confidential Information** binder.
  6. Signed Campaign Contribution Form (see Appendix B)
  7. New Mexico Preferences (if applicable)
- G. Other Supporting Material (if applicable)

#### Cost Proposal (Binder 2)

Within each section of the proposal, Offerors should address the items in the order indicated above. 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.

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.

## **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**

**Tasks** - Following is a list of tasks which the successful Offeror shall perform:

1. Coordinate preparation of project questionnaires, resolutions, and certification forms, flagging any legal issues raised therein for Board counsel; coordinate delivery to and receipt from agencies of project questionnaires and maintaining project lists; prepare and deliver to the SBOF the financing timetable, all bond authorizations and sales resolutions necessary for the issuance of the bonds, and all proceedings, transcripts (in a format approved by the SBOF Director), and minutes required to be adopted and publications required to be made by the SBOF relating to all prospective issuance of tax-exempt or taxable securities of the State of New Mexico.
2. Prepare and update the terms of the Notice of Sale relating to all prospective issuance of securities of the State of New Mexico issued by the SBOF and assure that such terms are in the best interest of the State, in consultation with the financial advisor, tax counsel and disclosure counsel.
3. Prepare and deliver to the SBOF the Contractors' original approving opinions relating to the validity and enforceability of the issuance of securities and, when applicable, to the tax-exempt status of such securities; provided, however, the Contractors may refuse to render such opinions, if, in their sole discretion, they determine that such approving opinions shall not be issued according to the facts and law pertaining to the particular issue and as requested, provide legal opinions as to proper use of project-specific bond proceeds.
4. Prepare and deliver to the SBOF all reauthorization resolutions required to be adopted and relating to legislative reauthorizations of bond proceeds and deliver necessary opinions related thereto.
5. Attend meetings of the SBOF and closings pertaining to securities issued by the State of New Mexico.
6. Assist the SBOF's financial advisor, disclosure counsel, tax counsel, and the SBOF in the preparation of a Preliminary Official Statement to be adopted by the SBOF at the time any Notice of Bond Sale or sale resolution is to be considered relating to the prospective issuance of securities of the State of New Mexico.
7. Assist the SBOF's financial advisor, disclosure counsel, tax counsel, and the SBOF in the preparation of an Official Statement describing the securities of the State of New Mexico to be delivered to the purchaser or purchasers immediately after the adoption of all bond resolutions by the SBOF.

8. Advise the SBOF's financial advisor, disclosure counsel, tax counsel, and the SBOF of any circumstances that come to the Contractors' attention which might require the preparation of a supplement or addendum to the Official Statements and assist in the preparation of any supplement or addendum needed prior to the delivery of any securities of the State of New Mexico.
9. Ensure timely closing of bond sales and the delivery of funds to the State.
10. At no extra cost to the SBOF, provide to the SBOF and the State Treasurer continuing information concerning pending state and federal legislation and other areas of current developments relating to the SBOF's bond issues, when known by the Contractors, on any proposed and, to the extent requested by the SBOF, outstanding bond issues of the SBOF, and assist the SBOF in evaluating options and alternatives for issuing additional bonds, refunding or calling of outstanding bonds and new financing techniques.
11. Review and advise on issues regarding bond proceed drawdowns, procedures, and other matters regarding the bond project disbursement regulations.
12. Provide any other services typically performed by a firm serving as bond counsel.
13. Upon request of the SBOF, perform advisory services generally related to various financing matters and on information presented on the SBOF website, which are not related to the issuance of securities by the SBOF.
14. Upon request of the SBOF, and in the event a separately procured SBOF disclosure counsel contractor is unable to perform or SBOF determines that it is necessary for bond counsel to provide disclosure counsel services, the Contractors, if able to perform, may be called upon to provide services related to bond matters generally including services typically performed by a firm serving as disclosure counsel.
15. Upon request of the SBOF, and in the event a separately procured SBOF tax counsel contractor is unable to perform or SBOF determines that it is necessary for bond counsel to provide tax counsel services, the Contractors, if able to perform, may be called upon to provide services related to bond matters generally including services typically performed by a firm serving as tax counsel.
16. Upon request of the SBOF, provide transaction review services of financings by other public entities that require SBOF approval.

## **B. TECHNICAL SPECIFICATIONS**

### **1. Organizational Experience**

Offerors **must**:

- a) provide a description of relevant corporate experience with state government and the private sector. 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 bond counsel. All bond counsel services provided to the private sector will also be considered;

- b) indicate the number of bond issuances for which the Offeror's bond counsel services were provided in the last two years and what percentage of business revenue is derived from providing bond counsel services; and
- c) describe at least two project successes and failures when serving as bond counsel for a bond issuance. Include how each experience improved the Offeror's services.

## 2. Organizational References

Offerors should 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 E, Organization Reference Questionnaire, to the business references they list. The business references must submit the Reference Form directly to the designee described in Section I.D.** It is the Offeror's responsibility to ensure the completed forms are received at or before 12:00 PM MDT or MST on December 18, 2019, for inclusion in the evaluation process.

Organizational 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.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 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.

#### 4. Mandatory Specification

a. Agreement to Perform Scope of Work

Pass/Fail only. Note, an Offeror's passing this mandatory requirement does not constitute SBOF's acceptance of any alternate language that may be proposed by the Offeror pursuant to Section II.C.15 and II.C.16. Upon the SBOF authorizing staff to negotiate with a successful Offeror, the SBOF may or may not accept any proposed alternative language.

b. Organization, Conflict of Interest, and Ability to Comply with Scope of Procurement

Points will be awarded based on evaluation of Offeror's organization and service capabilities within the scope of this RFP, including detail on where Offeror's capabilities comply, partially comply, and do not comply; whether any existing conflicts of interest may affect the Offeror's ability to comply with the scope of procurement; and Offeror's description of how concurrent conflicts would be handled.

c. Campaign Contribution Disclosure Form (Appendix B)

Pass/Fail only.

d. Cost Proposal (**must** be contained only in binder 2)

Pass/Fail, with points to be awarded as follows:

To pass this mandatory requirement, Offeror **must** agree:

1. to be reimbursed for New Mexico gross receipts taxes paid to the New Mexico Taxation and Revenue Department for the costs set forth in the contract that are incurred by the Contractor incident to its performance under the Contract;
2. that no payment of fees or reimbursement shall be made to the Offeror by the SBOF except upon SBOF Director approval of a detailed statement of account and receipts, if applicable;
3. that total fees **must** include all charges directly relating to the services required under the Contract, excluding out-of-pocket expenses, such as telephone, postage and shipping, printing and/or copier costs, and travel, if any;
4. that Contractor's travel expense reimbursement shall be subject to the limitations of the DFA Per-diem and Mileage Rule;
5. that fees will only be owed when bonds are ultimately closed (no costs shall be reimbursed if bonds are not closed); and
6. that Offeror's overhead costs shall not be reimbursed.

The evaluation of each Offeror's proposed fees will be conducted using the following formula:

$$\frac{\text{Lowest Responsive Offeror Estimated Biennial Fee}}{\text{Offeror's Estimated Biennial Fee}} \times 250 = \text{Awarded Points}$$

Each Offeror's biennial fee will be estimated based on the tiered cost schedule submitted and the following estimated amount of bonds to be issued by the SBOF in fiscal years 2020 through 2024.

- Two General Obligation Bond issuances are expected with par value of \$199.2 million (public sale);
- One Revenue Bond issuance is expected each year of the four year contract with par value of \$335.7 million each (public sale), each of which may include separate tranches of tax-exempt and taxable;
- One taxable Revenue Note issue is expected with a par value totaling \$119.0 million in FY21, (sold to the State Treasurer's Office); and
- One taxable Subordinate Revenue Note issuance is expected each year of the four year contract with par values of \$206.9 million in FY20 and \$199.0 million in FY21 (sold to the State Treasurer's Office).

Each Offeror's estimated biennial fee will also be adjusted for hourly rates proposed with respect to services set forth in Section 1(J) through 1(P) of the proposed Contract included in Appendix C to this RFP and any other unique aspects of the Offeror's cost proposal.

- e. New Mexico Employees Health Coverage Form  
Pass/Fail only.
- f. Employee Pay Equity Reporting  
Pass/Fail only.
- g. Evidence of Professional Liability Insurance  
Pass/Fail only.

## 1. Desirable Specification

- a. Firm History

Points will be awarded based on the evaluation of Offeror's firm history and expertise relative to providing bond counsel services.

b. Offeror Qualifications, Municipal Bond Experience and Key Personnel Résumés

Points will be awarded based on evaluation of Offeror's qualifications to act as Bond Counsel to SBOF, how Offeror's resources would be organized to provide services required by the RFP, and résumés of personnel that will be utilized in performance of the services required by this RFP. Failure to list an individual's relevant degrees attained and relevant years of experience may result in the assumption that the individual has no relevant degrees or experience. Points related to résumés will be based on the levels of relevant education and years and relevance of experience listed. The other commitments for individuals will be considered as well.

Points will be awarded based on Offeror's experience in the role of bond counsel with respect to the issuance and sale of New Mexico's tax-exempt General Obligation Bonds and taxable and tax-exempt Severance Tax Bonds or similar issuances. Points will also be awarded for the Offeror's reported solutions to challenges faced in these similar bond transactions. Offeror must provide evidence that lawyers are in good standing with the New Mexico Bar Association.

c. Personnel References

Points will be awarded based on reference responses to a series of questions that will be asked concerning the quality of the Offeror's contract representative's responsiveness to problems and complaints, ability to understand the technical aspects of services provided, and overall satisfaction with his or her performance. In the event that a provided reference cannot be reached within a reasonable amount of time or declines to respond to the questions, the Offeror will receive zero (0) points for that reference.

d. Business References

Points will be awarded based on reference responses to a series of questions that will be asked concerning the quality of the Offeror's services, delivery of the Offeror's services, the Offeror's responsiveness to problems and complaints, and overall satisfaction with the Offeror's performance. In the event that a provided reference cannot be reached within a reasonable amount of time or declines to respond to the questions, the Offeror will receive zero (0) points for that reference.

e. Demonstrated Knowledge of and Experience with SBOF Bonding Programs

Points will be awarded based on Offeror's demonstrated knowledge of New Mexico's Severance Tax and General Obligation Bonding programs, including Offeror's comprehensive understanding of all aspects of the bonding programs and state and federal laws and regulations affecting the programs. Offerors may receive points for demonstrating relevant knowledge, which may be obtained by reviewing the Procurement Library, without demonstrating first-hand experience.

f. New Mexico Business and/or Veteran Business Preference

Offerors should state whether their principal place of business is located in New Mexico as defined in Section 13-1-22 NMSA 1978, whether it is a veteran-owned business located in New Mexico as defined in Section 13-1-22 NMSA 1978, and include a copy of Offeror's preference certificate. For more information on New

Mexico Business and Veteran Business Preference requirements, see <http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx>.

g. Technical Approach

Points will be awarded based on evaluation of Offeror's:

- approach to ensuring completion of time-sensitive duties in accordance with project timelines;
- process for document preparation and tracking of changes to draft documents;
- compliance review process for questionnaires on appropriated projects; and
- strategies to interact effectively with SBOF staff, disclosure counsel, tax counsel, financial advisor, Board members, and recipients of bond proceeds.

Points will also be awarded based upon Offeror's description of how it will ensure sufficient resources are available for bi-annual questionnaire review periods and evaluation of the required SBOF staff resources that will be required.

h. Quality of Service Delivery

Points will be awarded based on evaluation of Offeror's:

- described accessibility; process for bond document compilation, tracking and distribution;
- the amount of advance notice required for Offeror's attendance at meetings in Santa Fe, New Mexico; and
- accessibility to present bond resolutions and other matters.

Points will also be awarded for:

- accessibility and responsiveness to be expected of the contract representative for specific proposed response times for bond questionnaire review, bond sale timeline creation, analysis of legislation affecting the SBOF's bonding programs, and other matters;
- Offeror's internal process to ensure invoices sent to the SBOF are accurate and in line with a contract fee schedule;
- the proposed response for correction of errors;
- and description of any other features that display the Offeror's quality of service.

## **C. BUSINESS SPECIFICATIONS**

### **1. 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, internal financial

statements) to enable the Evaluation Committee to assess the financial stability of the Offeror.

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

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

## 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**

Scoring Factors	Points Available	
	Score	Weight
<b>Mandatory Specifications</b>		
1 Agreement to Perform Scope of Work	p/f	--
2 Organization, Conflict of Interest, and Ability to Comply with Scope of Procurement	100	8%
3 Campaign Contribution Disclosure Form	p/f	--
4 Cost Proposal	250	20%
5 NM Employees Health Coverage Form	p/f	--
6 Employee Pay Equity Reporting	p/f	--
7 Evidence of Professional Liability Insurance	p/f	--
<b>TOTAL</b>	<b>350</b>	<b>27%</b>
<b>Desirable Specifications</b>		
1 Firm History	40	3%
2 Offeror Qualifications, Muni Bond Experience & Key Personnel Resumes	200	16%
3 Personnel References	60	5%
4 Business References	60	5%
5 Demonstrated Knowledge of NM & SBOF Bonding Programs	200	16%
6 NM Business and/or Veteran Business Preference <i>(based on 10% of 1275 total points)</i>	125	10%
7 Technical Approach	120	9%
8 Quality of Service Delivery	120	9%
<b>TOTAL</b>	<b>925</b>	<b>73%</b>
<b>TOTAL SCORING</b>	<b>1275</b>	<b>100%</b>

p/f = Pass/Fail

### B. EVALUATION PROCESS

1. All Offeror proposals will be reviewed for compliance with the requirements and specifications stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the Offeror for clarification of the response as specified in Section II. B.7.
3. The Evaluation Committee may use other sources to perform the evaluation as specified in Section II. C.18.
4. Responsive proposals will be evaluated on the factors in Section IV, which have been assigned a point value. The evaluation process will occur in two phases.

- a. **Phase I:** The Evaluation Committee will consider all specification *except* the cost proposal. The responsible Offerors with the highest scores will be selected as Phase 1 finalist Offerors, based upon the proposals submitted.
- b. **Phase II:** The Evaluation Committee will consider the cost proposal of the Phase 1 finalists ONLY, and will identify the Offeror to be recommended for award.

The responsible Offerors whose proposals are most advantageous to the State taking into consideration the evaluation factors in Section IV and the evaluation as conducted across the two phases will be recommended for award (as specified in Section II.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

Bond Counsel Services

RFP# C20-341-4000-14996

### 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 E.

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than 3:00 PM MDT or MST on December 9, 2019. Only potential Offerors who return this form completed with the indicated intention of submitting a proposal will be considered. Failure to return the Acknowledgement of Receipt Form shall result in rejection of the Offeror's proposal. Only potential Offerors who submit this form 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.

Name: Ashley E. Leach, Procurement Manager

Address: 181 Bataan Memorial Building

407 Galisteo Street

Santa Fe, NM 87501

Telephone: (505) 827-4902

Fax: (505) 827-3985

**APPENDIX B**

**CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

## **Campaign Contribution Disclosure Form**

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

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

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

The following definitions apply:

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

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

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

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

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

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

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

**DISCLOSURE OF CONTRIBUTIONS:**

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

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

Name of Applicable Public Official: \_\_\_\_\_

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

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

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

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

(Attach extra pages if necessary)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

—OR—

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

---

Signature

---

Date

---

Title (Position)

**APPENDIX C**  
**SAMPLE CONTRACT**

STATE OF NEW MEXICO

**State Board of Finance**

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

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

IT IS AGREED BETWEEN THE PARTIES:

**1. Scope of Work.**

The Contractor shall perform the work as outlined in Exhibit A, attached hereto and incorporated herein by reference.

- A. Collaborate with other members of the financing team to structure bond issues in a manner that minimizes the SBOF’s transactions cost and its credit risk in the transaction and review issues relating to bonds.
- B. Assist in the preparation of project questionnaires, resolutions, and certification forms, flagging any issues related to the tax-exempt status of securities for Board counsel; advise on, and assist with the preparation of, when necessary, the questionnaires, project lists, financing timetables, bond authorizations and sales resolutions, proceedings, transcripts, and minutes required to be made by the SBOF relating to all prospective issuance of tax-exempt or taxable securities of the State of New Mexico.
- C. Assist in presenting information relating to the tax-exempt status of bonds to bond rating agencies and providers of credit enhancement to the extent required or requested.
- D. Advise in the preparation of the Notice of Sale relating to all prospective issuance of securities of the State of New Mexico issued by the SBOF and assure that such terms are in the best interest of the state, in consultation with the Financial Adviser, Bond Counsel, and Disclosure Counsel.
- E. When requested, prepare and deliver to the SBOF the Contractors’ opinions relating to the federal and state income tax treatment of interest on bonds; the applicability of provisions of federal and state securities laws; the applicability of tax law provisions governing estate and give taxation; eligibility of the bonds for investment by various fiduciaries and other regulated investors; exemption of the Resolution/Indenture from qualification under the Trust Indenture Act of 1939, as amended; and the status of the bond and related obligations under the United State Bankruptcy Code.
- F. Assist the SBOF’s financial advisor, disclosure counsel, bond counsel, and the SBOF in the preparation of a Preliminary Official Statement to be adopted by the SBOF at

- the time any Notice of Bond Sale or sale resolution is to be considered relating to the prospective issuance of securities of the State of New Mexico.
- G. Assist the SBOF's financial advisor, disclosure counsel, bond counsel, and the SBOF in the preparation of an Official Statement describing the securities of the State of New Mexico to be delivered to the purchaser or purchasers immediately after the adoption of all bond resolutions by the SBOF.
  - H. Attend meetings of the Board of Finance and closings pertaining to the securities issued by the State of New Mexico.
  - I. At no extra cost to the SBOF, provide to the SBOF and the State Treasurer continuing information concerning pending state and federal legislation and other areas of current developments relating to the SBOF's bond issues, when known by the Contractors, on any proposed and, to the extent requested by the SBOF, outstanding bond issues of the SBOF, and assist the SBOF in evaluating options and alternatives for issuing additional bonds, refunding or calling of outstanding bonds and new financing techniques.
  - J. Respond to inquiries and render advice relating to the tax-exempt status (and maintenance thereof) of tax-exempt securities of the State of New Mexico, including outstanding securities for which the Contractor did not serve as Tax Counsel.
  - K. Advise the SBOF regarding continuing disclosure requirements, if applicable, under federal and state securities law in connection with the issuance of debt.
  - L. Provide continuing advice to the SBOF concerning any actions necessary to assure the interest paid on bonds issued by the State of New Mexico will continue to be excluded from gross income for federal purposes.
  - M. When requested, respond to Internal Revenue Service audits or Securities and Exchange Commission investigations.
  - N. Assist the SBOF Counsel, if requested, in any litigation relating to or in any way affecting the issuance, sale, execution and delivery of SBOF bonds, notes or certificates.
  - O. Upon request of the SBOF, and in the event a separately procured SBOF disclosure counsel contractor is unable to perform or SBOF determines that it is necessary for bond counsel to provide disclosure counsel services, the Contractors, if able to perform, may be called upon to provide services related to bond matters generally including services typically performed by a firm serving as disclosure counsel.
  - P. Upon request of the SBOF, and in the event a separately procured SBOF tax counsel contractor is unable to perform or SBOF determines that it is necessary for bond counsel to provide tax counsel services, the Contractors, if able to perform, may be called upon to provide services related to bond matters generally including services typically performed by a firm serving as tax counsel.
  - Q. Upon request of the SBOF, provide transaction review services of financings by other public entities that require SBOF approval.

R. Provide any other services typically performed by a firm serving as tax counsel.

**2. Compensation.**

A. Compensation Schedule. In full payment for the services satisfactorily performed by the Contractor under Paragraphs 1(A) through 1(H) (subject to Paragraph 2(F)), the Contractor shall be paid a fee based upon the size and type of each completed bond issue, as follows, plus applicable gross receipts taxes:

1. Fixed-Rate General Obligation Bonds & Fixed Rate Severance Tax Revenue Bonds (Including Current Refunding Transactions)

Amount of Issue

Fee

[TO BE DETERMINED THROUGH RFP PROCESS]

2. Fixed-Rate Bonds other than General Obligation Bonds and Severance Tax Bonds

Amount of Issue

Fee

[TO BE DETERMINED THROUGH RFP PROCESS]

3. Advance Refunding Transactions

Amount of Issue

Fee

[TO BE DETERMINED THROUGH RFP PROCESS]

4. Taxable Note Obligations Sold to the State

Amount of Issue

Fee

[TO BE DETERMINED THROUGH RFP PROCESS]

B. Services performed by the Contractor under Paragraphs 1(I) through 1(R) shall be provided at no cost unless, on a project basis, the number of billable hours exceeds sixty (60) hours. Promptly after the Contractor is aware that a project is likely to exceed sixty (60) hours, the Contractor must advise the Director of the SBOF and receive written approval from the Director of the SBOF prior to proceeding further. If approved, the Contractor shall be paid [TO BE DETERMINED THROUGH RFP PROCESS] per hour in full payment for these services plus applicable gross receipts taxes, subject to any limits imposed at the time of approval.

Payments for such services shall be contingent upon sufficient appropriations being made by the Legislature of New Mexico for performance of the services. The SBOF's

decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

- C. In addition to the service fees set forth in Paragraph 2(A) and 2(B), the Contractor may bill the SBOF for reimbursement of costs and charges advanced by the Contractor in accordance with the following schedule, plus applicable gross receipts taxes on non-pass through items:

Commercial Messenger/ Delivery Service:	Actual Costs
Filing Fees, Service, and Statutory Fees:	Actual Costs
In-House Courier Service:	[TO BE DETERMINED THROUGH RFP PROCESS]
Computerized Legal Research (e.g., LEXIS, WESTLAW):	As billed by Firm or library, for computer
Legal Research:	time, number of pages printed, number of searches, etc.
Photocopies:	[TO BE DETERMINED THROUGH RFP PROCESS]
Postage:	Actual costs for mailings costing more than \$1.00 (e.g., Federal Express or similar express mail delivery charges and bulky or multiple mailings.)
Travel, Food and Lodging:	Subject to the limitations of the Department of Finance and Administration Per-Diem Mileage Rule. Contractor agrees to receive approval from the Director of the SBOF before incurring these expenses. When time permits travel and lodging shall be booked at discount rates.

- D. The Contractor shall not bill the SBOF for overhead expenses. The Contractor is responsible for paying to the New Mexico Taxation and Revenue Department all gross receipts taxes levied on amounts paid under this Agreement.
- E. Pursuant to NMAC 2.61.5.16(B), transaction review services of financings by other public entities which require SBOF approval provided to the SBOF under Scope of

Work 1(Q) above will be compensated at the hourly rate set forth in Compensation 2(B), and the public entity issuing the bonds or proposing a bond-related transaction for which the financing plan is being reviewed will be solely responsible for paying the fees and costs associated with the review, analysis and recommendation of the Contractor. The SBOF shall advise the public entity of its obligation to make, collect, guarantee or otherwise ensure any payments of any kind due to the Contractor by it under these provisions and the Contractor shall have no claim against the SBOF or the State if that public entity is delinquent in making or fails to make any such payments. All compensation under this paragraph shall be payable only for issuances that are ultimately closed (no costs shall be reimbursed if bonds are not closed).

- F. All compensation under Paragraph 2(A) and issuance-related compensation under Paragraph 2(C) above shall be payable only for issuances that are ultimately closed (no costs shall be reimbursed if bonds are not closed). Such fees shall be paid from the bond proceeds of the bond issuance for which such fees and reimbursable expenses were incurred or such other funding sources authorized therefore by the New Mexico Legislature, as applicable. All fees and reimbursable expenses shall be billed by the contractor to the State and shall only be paid upon receipt by the SBOF of a detailed, certified statement of account. There shall be no additional fees or expenses and no separate billing presented to the SBOF for services rendered by any Subcontractor.

Within fifteen (15) days after the date the SBOF receives written notice from the Contractor that payment is requested for services or items of tangible personal property delivered on site and received, the SBOF shall issue a written certification of complete or partial acceptance or rejection of the services or items of tangible personal property. If the SBOF finds that the services or items of tangible personal property are not acceptable, it shall within thirty days after the date of receipt of written notice from the Contractor that payment is requested, provide to the Contractor a letter of exception explaining the defect or objection to the services or delivered tangible personal property along with details of how the Contractor may proceed to provide remedial action. Upon certification by the SBOF that the services or items of tangible personal property have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of certification. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the SBOF shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

- G. All invoices must be received by the SBOF no later than fifteen (15) days after the termination of the contract. Invoices received after such date WILL NOT BE PAID.

**3. Term.**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE GSD/SPD Contracts Review Bureau. This Agreement shall terminate on **(DATE)** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations).

In accordance with NMSA 1978, § 13-1-150, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in NMSA 1978, § 13-1-150.

**4. Termination.**

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

B. Notice; Agency Opportunity to Cure.

1. Except as otherwise provided in Paragraph (4)(B)(3), the Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.
2. Contractor shall give Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Agency must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.
3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Paragraph 5, "Appropriations", of this Agreement.

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

D. Termination Management. Immediately upon receipt by either the Agency or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Agency; 2) comply with all directives issued by the Agency in the notice of termination as to the performance of

work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the Agency upon termination and shall be submitted to the agency as soon as practicable.

**5. Appropriations.**

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

**6. Status of Contractor.**

The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

**7. Assignment.**

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

**8. Subcontracting.**

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

**9. Release.**

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

**10. Confidentiality.**

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

**11. Product of Service -- Copyright.**

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

**12. Conflict of Interest; Governmental Conduct Act.**

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

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

1. in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Agency employee while such employee was or is employed by the Agency and participating directly or indirectly in the Agency's contracting process;
2. this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;
3. in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public

officer or employee of the State whose official act, while in State employment, directly resulted in the Agency's making this Agreement;

4. this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;
5. in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and
6. in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Agency.

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

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

**13. Amendment.**

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

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

**14. Merger.**

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

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

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

**16. Equal Opportunity Compliance.**

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

**17. Applicable Law.**

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

**18. Workers Compensation.**

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Agency.

**19. Records and Financial Audit.**

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, the General Services Department/State Purchasing Division and the State Auditor. The Agency shall have the

right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments

**20. Indemnification.**

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

**21. New Mexico Employees Health Coverage.**

- A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
- B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.
- C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage.

**22. Invalid Term or Condition.**

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

**23. Enforcement of Agreement.**

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

**24. Notices.**

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

State Board of Finance  
407 Galisteo Street  
Bataan Memorial Building, Room 181  
Santa Fe, NM 87501

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

**25. Authority.**

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

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

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

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

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

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

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

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

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

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

Contract ID# \_\_\_\_\_

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

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

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

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

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

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

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

## **APPENDIX D**

### **LETTER OF TRANSMITTAL FORM**

**APPENDIX D**  
**Letter of Transmittal Form**

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

**Offeror Name:** \_\_\_\_\_ **FED ID#** \_\_\_\_\_

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. 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.

\_\_\_\_\_, 2019

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

## **APPENDIX E**

### **ORGANIZATIONAL 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: Ashley Leach, Procurement Manager, 181 Bataan Memorial Building 407 Galisteo Street Santa Fe, NM 87501, by 12:00 PM MDT or MST on December 18, 2019 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# C20-341-4000-14996**

**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 Board of Finance via facsimile or e-mail at:

Name: Ashley Leach, Procurement Manager

Address: 181 Bataan Memorial Building

407 Galisteo Street

Santa Fe, NM 87501

Telephone: (505) 827-4902

Fax: (505) 827-3985

Email: Ashley.Leach@state.nm.us

no later than 12:00 PM MDT or MST on December 18, 2019 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.

<b>Company providing reference:</b>	
<b>Contact name and title/position</b>	
<b>Contact telephone number</b>	
<b>Contact e-mail address</b>	
<b>Project description;</b>	
<b>Project dates (starting and ending);</b>	
<b>Technical environment for the project your providing a reference</b> (i.e., Software applications, Internet capabilities, Data communications, Network, Hardware);	

**QUESTIONS:**

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

**COMMENTS:**

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

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

**COMMENTS:**

3. How would you rate the vendor's flexibility relative to changes in the project scope and timelines?

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

COMMENTS:

4. What is your level of satisfaction with hard-copy materials produced by the vendor?

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

COMMENTS:

5. How would you rate the dynamics/interaction between the vendor and your staff?

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

COMMENTS:

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 products developed 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: