

## Appendix B General Requirements

### GENERAL REQUIREMENTS

This procurement will be conducted in accordance with Chapter 13, NMSA 1978 and 1.4.1 NMAC.

1. Acceptance of Conditions Governing the Procurement. Offerors must indicate their acceptance of the Conditions Governing the Procurement section in the letter of transmittal. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in the RFP.
2. Rejection of Proposal Submittals. This Request for Proposal does not commit Manager/Fiscal Entity to award a contract, to pay any costs incurred in preparing this RFP, or to procure or contract for services. Fiscal Entity/Manager reserves the right to accept or reject any or all RFPs received pursuant to this Request or to cancel in whole or in part this RFP if it is in the best interest of Fiscal Entity/Manager to do so.
3. Incurring Costs. Fiscal Entity/Manager shall not be liable for any costs incurred by Offeror prior to or during the development of a contract.
4. Prime Contractor Responsibility. Any contract that may result from this RFP shall specify that the prime Contractor is solely responsible for the fulfillment of the contract with the Fiscal Entity. The Fiscal Entity will make contract payments only to the prime Contractor.
5. Subcontractors/Consent. The use of subcontractors is allowed. The prime Contractor shall be wholly responsible for the entire performance of the contract, whether or not subcontractors are used. Additionally, the prime Contractor must receive approval, in writing, from the Fiscal Entity/Manager before any subcontractor is used during the term of the agreement.
6. Certifications and Licenses. Potential Offerors must have the proper certifications and licenses to do business in New Mexico as follows:

#### Corporations:

- File Articles of Incorporation with the Secretary of State's Office and record with the County pursuant to NMSA 1978, Section 53-4-6.
- Name of registered agent pursuant to NMSA 1978, Section 53-5-2.
- Certificate of Authority from the Secretary of State's Office indicating that the corporation is authorized to conduct business in New Mexico pursuant to NMSA 1978, Sections 53-17-6 and 53-17-8.
- Obtain a Federal employer identification number.

- Register with the New Mexico Taxation and Revenue Department and obtain a tax identification number to report gross receipts taxes.

#### Limited Liability Companies:

- Registered office and registered agent for service of process that is either a New Mexico resident or domestic corporation, limited liability company, or partnership that is located in New Mexico.
- File an Application for Registration with the Secretary of State's Office to conduct business in New Mexico and must obtain a Certificate of Good Standing from the Secretary of State's Office to conduct business in New Mexico.
- Obtain a Federal employer identification number.
- Register with the New Mexico Taxation and Revenue Department and obtain a tax identification number to report gross receipts taxes.

#### Limited Partnerships:

- Apply for Certificate of Limited Partnership with the New Mexico Secretary of State pursuant to NMSA 1978, Sections 54-2A-101 through 54-2A-119.
- File a Statement of Qualifications with the New Mexico Secretary of State pursuant to NMSA 1978, Sections 54-1A-101 through 54-1A-1206.
- Obtain a Federal employer identification number.
- Register with the New Mexico Taxation and Revenue Department and obtain a tax identification number to report gross receipts taxes.

#### General Partnerships:

- File a Statement of Partnership Authority with the Secretary of State pursuant to NMSA 1978, Sections 54-1A-101 through 54-1A-1206.
- Obtain a Federal employer identification number.
- Register with the New Mexico Taxation and Revenue Department and obtain a tax identification number to report gross receipts taxes.

#### Sole Proprietorships and Joint Ventures:

- Obtain a Federal employer identification number.
- Register with the New Mexico Taxation and Revenue Department and obtain a tax identification number to report gross receipts taxes.

7. 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 Manager will not merge, collate, or assemble proposal materials.
8. Offerors' Rights to Withdraw Proposal. Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request signed by the Offeror's duly authorized representative and addressed to the Manager. The approval or denial of withdrawal

requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations. (See 1.4.1 NMAC.)

9. Proposal Offer Firm. Responses to this RFP, including proposal prices for services, will be considered firm for one hundred twenty (120) calendar days after the due date for receipt of proposals or ninety (90) calendar days after the due date for the receipt of a best and final offer, provided the Offeror is invited or required to submit one.
10. Disclosure of Proposal Contents.
  - A. Proposals will be kept confidential until negotiations and the award are completed by the Manager. 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 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:
    1. 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.
    2. Confidential data is restricted to:
      - a. confidential financial information concerning the Offeror's organization; and
      - b. data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, NMSA 1978 § 57-3A-1 to 57-3A-7.
  - B. If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, the Manager 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.

**Please note:** The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.

11. No Obligation. This RFP in no manner obligates the Fiscal Entity/Manager or any of its programs to the use of any Offeror's services until a valid written contract is awarded and approved by appropriate authorities.
12. Termination. This RFP may be canceled at any time, and any and all proposals may be rejected in whole or in part when the Fiscal Entity/Manager determines such action to be in the best interest of the Fiscal Entity/Manager.
13. Sufficient Appropriation. Any contract awarded as a result of the RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such termination will

be effected by sending written notice to the Contractor. The Fiscal Entity/Manager's decision as to whether sufficient appropriations and authorizations are available will be accepted by the Contractor as final.

14. Legal Review. The Fiscal Entity/Manager requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror concerns must be promptly brought to the attention of the Manager.
15. Governing Law. This RFP and any contract with an Offeror which may result from this procurement shall be governed by the laws of the State of New Mexico.
16. Prohibited Bidding. Pursuant to NMSA 1978, Section 10-16-13, the Fiscal Entity/Manager shall not accept a bid or proposal from a person who directly participated in the preparation of specifications, qualifications, or evaluation criteria on which the specific competitive bid or proposal was based. A person in this context includes the person's agents, employees, or representatives. A person accepting a bid or proposal on behalf of a state agency or political subdivision of this State shall exercise due diligence to ensure compliance with this section.
17. Consent to Jurisdiction and Venue. If a recipient of this RFP chooses to offer a proposal, the Offeror understands and agrees that by submitting such proposal to the Fiscal Entity/Manager, they consent to and agree to the exclusive jurisdiction of the Courts of the State of New Mexico for the resolution of any disputes arising under or resulting from contract selection and/or approval process in response to this RFP, or any dispute arising under or resulting from the performance of any contract resulting from this RFP that cannot be resolved informally. The Offeror, by submitting such proposal, waives any objection to the personal jurisdiction of the Courts of the State of New Mexico over the Offeror. By submitting such proposal, the Offeror agrees and consents that the Taos County County District Court shall have venue and jurisdiction over all matters arising or derived from this RFP, including a resulting contract.
18. Basis for Proposal. Only information supplied by Fiscal Entity/Agency in writing through the Manager or in this RFP should be used as the basis for the preparation of Offeror proposals.
19. Contract Terms and Conditions. The negotiated contract between the Fiscal Entity and the Contractor will follow the format specified by the Fiscal Entity. The Fiscal Entity/Manager/Agency reserves the right to negotiate with a successful Offeror provisions in addition to those contained in this RFP.

Should an Offeror object to any of the terms and conditions, as referenced in this Section or the contract, that Offeror must propose specific alternative language. The Fiscal Entity/Manager may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions are not

acceptable to Fiscal Entity/Manager and will result in disqualification of the Offeror's proposal.

The contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal will be incorporated into and become part of the negotiated contract. In the event the Offeror's proposal conflicts with the RFP, the RFP governs. In the event the executed contract conflicts with the proposal, the executed contract governs.

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, i.e., the RFP process prior to selection as successful Offeror, then 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 constitutes an explicit agreement by the Offeror that the contractual terms and conditions contained in this RFP are accepted by the Offeror.

20. Offeror's Terms and Conditions. Offerors must submit with the proposal a complete set of any additional terms and conditions which they expect to have included in a contract negotiated with the Fiscal Entity/Manager.
21. Contract Deviations. Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between the Fiscal Entity/Manager and the selected Offeror and shall not be deemed an opportunity to amend the Offeror's proposal.
22. Contract Negotiations. Contract negotiations will be held in accordance with applicable provisions of 1.4.1.39 NMAC, Procurement Code Regulations.
23. Offeror Qualifications. The Committee may make such investigations as necessary to determine the ability of the Offeror to adhere to the requirements specified within this RFP. The Committee will reject the proposal of any Offeror who is not a responsible Offeror or fails to submit a responsive offer as defined in NMSA 1978, Sections 13-1-83 and 13-1-85.
24. Right to Waive Minor Irregularities. The Committee reserves the right to waive minor irregularities. The Chief Procurement Officer reserves the exclusive right to determine whether discrepancies regarding mandatory requirements result in an offer being Non-Responsive.
25. Change in Contractor Representatives. The Fiscal Entity/Manager/Agency reserves the right to require a change in contractor representatives if, in the opinion of the Fiscal Entity/Manager, the assigned representative(s) is (are) not adequately meeting the needs of the Fiscal Entity/Manager/Agency.

26. Notice of Penalties. The Procurement Code, NMSA 1978, Sections 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.
27. Fiscal Entity/Manager/Agency Rights. The Fiscal Entity/Manager/Agency in agreement with the Committee reserves the right to accept all or a portion of a potential Offeror's proposal.
28. Right to Publish. Throughout the duration of the procurement process and contract term, Offerors and Contractors must secure from the Fiscal Entity/Manager written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or Fiscal Entity 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.
29. Ownership of Proposals. All documents submitted in response to this RFP shall become the property of the Agency.
30. 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 Fiscal Entity/Manager. 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 Fiscal Entity/Manager's written permission.
31. 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.
32. Use of Electronic Versions of this RFP. This RFP is being made available by electronic means. If accepted by such means, the Offeror acknowledges and accepts full responsibility to insure that no changes are made to the RFP. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the Manager, the version maintained by the Manager shall govern.
33. Insurance Requirmenets (see Appendix C).
34. 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 twenty (20) hours per week over a six

(6) month period during the term of the executed contract, Offeror must agree to have in place, and agree to maintain for the term of the contract, health insurance for those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

- B. Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the State.
  - C. Offeror must agree to advise all employees of the availability of state publicly-financed health care coverage programs.
  - D. For Indefinite Quantity, Indefinite Delivery contracts, i.e., 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 of \$250,000 from the state, and if applicable, from local public bodies if from a state price agreement.
35. Disclosure of Campaign Contributions (see Appendix D). Offeror must complete, sign, and return the Campaign Contribution Disclosure Form as a part of their proposal. This requirement applies regardless whether a covered contribution was made or not made for the positions of Governor and Lieutenant Governor. Failure to complete and return the signed unaltered form will result in disqualification.
36. Disclosure Regarding Responsibility.
- A. Any prospective Contractor and any of its principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any state agency or local public body for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor:
    - 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 19 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; or
  4. has, preceding this offer, been notified of any delinquent federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.
    - a. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
    - b. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
    - c. Have had within a three year period preceding this offer, 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 Fiscal Entity/Manager at any time during the term of the contract, 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 the contract. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this contract. Failure of the Contractor to furnish a disclosure or provide additional information as requested will render the Offeror non-responsive.
- E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.



- F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of the contract. 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 Fiscal Entity/Manager.

If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the State of New Mexico and the Fiscal Entity/Manager, the State Purchasing Agent or Chief Procurement Officer may terminate the involved contract for cause. Still further the State Purchasing Agent or Chief Procurement 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 Chief Procurement Officer.

37. New Mexico Preferences. To ensure adequate consideration and application of NMSA 1978, Section 13-1-21, Offerors must include a copy of their preference certificate with their proposal. Certificates for New Mexico Business Preference and New Mexico Resident Veterans Business Preference must be obtained through the New Mexico Department of Taxation & Revenue. An agency shall not award a business both a resident business preference and a resident veteran business preference. See:

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

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

38. Conflict of Interest: Governmental Conduct Act. The Offeror warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

The Offeror certifies that the requirements of the Governmental Conduct Act, NMSA 1978, Sections 10-16-1 through 10-16-18, regarding contracting with a public officer or state employee or former state employee have been followed.

39. Equal Employment Opportunity. The following requirements shall apply to state- and federal-funded contracts: In connection with this RFP and the anticipated contract, the Offeror shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual preference, national origin, age, marital status, disability, or other protected class.

The Offeror shall take affirmative action to insure that all applicants are treated fairly during employment, without regard to their race, color, religion, sex, sexual preference, national origin, age, marital status, disability, or other protected class.

Such actions shall include but not be limited to the following: layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.