

STATE OF NEW MEXICO



NEW MEXICO ENVIRONMENT DEPARTMENT
SURFACE WATER QUALITY BUREAU
MONITORING AND ASSESSMENT SECTION

Request For Quotes

**Federal Clean Water Act Section 604 (b)
Water Quality Management Planning
Federal Fiscal Year 2011**

QUOTES DUE OCTOBER 4, 2010

RFQ Release Date: September 1, 2010



MONITORING AND ASSESSMENT SECTION

New Mexico Environment Department

Surface Water Quality Bureau

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REQUEST FOR QUOTES TO CONDUCT WATER QUALITY MANAGEMENT PLANNING

I. INTRODUCTION

Purpose

The Surface Water Quality Bureau of the New Mexico Environment Department requests quotes from **regional public comprehensive planning organizations** to conduct water quality management planning as defined under sections 205(j) and 303(e) of the Clean Water Act (please see Attachment A). These funds are made available through an RFQ as, given the duration and amount of an award; this is the appropriate approach through the State of New Mexico Procurement Code. In response to this RFQ we seek detailed quotes (i.e. proposals) to conduct water quality management planning. While all quotes focused on water quality management planning are welcomed, those which will fund activities that clearly address the State's water quality goals to preserve, protect, and improve the water quality in New Mexico are likely to be rated highest. In this respect NMED encourages quotes focused on TMDLs, UAA or other water quality management planning that will directly address identified water quality impairments and do not overlap with development of watershed based plans that are eligible for funding through NMED's 319(h) program.

Regional public comprehensive planning organizations are defined as regional planning agencies, councils of governments, conservation districts, irrigation districts, counties, cities and towns, and other non-federal or non-state public planning agencies. Such organizations must be chartered with appropriate powers as a unit of New Mexico local government, an independent sub-state agency, or an interstate organization under an interstate agreement of which New Mexico is a party. Organizations operating as an arm of the state or federal government are not eligible. Please see Attachment B for further guidance.

Terminology

Act	=	federal Clean Water Act
Bureau	=	Surface Water Quality Bureau
CWA	=	federal Clean Water Act
DFA	=	New Mexico Department of Finance and Administration
EPA	=	United States Environmental Protection Agency
FFY	=	Federal Fiscal Year
NMED	=	New Mexico Environment Department
NMSA	=	New Mexico Statutes Annotated
NPDES	=	National Pollutant Discharge Elimination System
RFQ	=	Request for Quotes
State	=	State of New Mexico
SWQB	=	Surface Water Quality Bureau
TMDL	=	Total Maximum Daily Load
WQL	=	Water Quality Limited

Scope of Procurement

The scope of procurement shall encompass the work and other requirements detailed in Section III.

Funding

Funding for the work program is dependent on the receipt of federal grants authorized under Section 604(b) of the federal Clean Water Act and allocated in Federal Fiscal Year 2011. Total funding for all projects awarded under this RFQ will not exceed \$40,400. Award of funds will be made pursuant to the competitive sealed quote process.

The Bureau expects to receive federal funds under Section 604(b) of the federal Clean Water Act on an annual basis with FFY funds anticipated to arrive in January 2011. Continued funding under the 604(b) program will be contingent upon both the continued receipt by the Bureau of these federal funds and on the receipt of acceptable bids through the competitive quote process.

Time Period

The time period of awards made under this RFQ will be one year from the award of the contract.

Background

Section 604(b) of the CWA requires the U.S. Environmental Protection Agency (EPA) to reserve each year for each State 1% or \$100,000, whichever is greater, of its share of Title II funds for statewide water quality management planning. In the case of New Mexico, the amount reserved in FFY10 is \$101,000. Section 205(j)(3) of the CWA provides, with certain exceptions, that 40%, or \$40,400, of these funds be allotted to a **regional public comprehensive planning organizations** (defined on page one of this RFQ) for water quality management planning activities which will contribute to the State water quality management program. Any water quality management planning as defined in sections 205(j) and 303(e) are eligible.

The quotes selected as a result of this RFQ process will be included in the State workplan submitted to EPA. EPA will have oversight of the State's workplan. Once approval has been granted by EPA, the Bureau will have oversight of the selected contractor's workplan and will be required to report progress on the contractor's work to EPA. Further, EPA guidance requires that in managing the selection and funding process, States clearly communicate their water quality goals, program priorities and prospective projects.

State Water Quality Goals

The State water quality goals are to preserve, protect, and improve the water quality in New Mexico in order to protect the designated uses of these waters and to contribute to the general public welfare.

State Program Priorities

Section 303(d) of the federal Clean Water Act (CWA) requires that each State identify those waters for which existing required pollution controls are not stringent enough to meet State water quality standards. For these waters, States are required to establish TMDLs. Implementation of Section 303(d) of the CWA has traditionally emphasized point source wasteload allocations, which are enforced by incorporating them into National Pollutant Discharge Elimination System (NPDES) permits as discharge limits. Nonpoint sources are generally included as a separate component of a TMDL because of the difficulty in measuring water quality impacts and the effectiveness of controls. However, experience has shown that controlling point source discharges does not necessarily ensure attainment of water quality standards, especially when nonpoint sources are a significant contributor to water quality problems. Applications submitted for this funding should focus on water quality management planning activities outside of those eligible for funding by the annual SWQB 319(h) Non-Point Source Management Program RFQ process.

State Prospective Projects

The Bureau is engaged in several activities to assess and protect the quality of New Mexico's waters. The Department has developed lists of surface waters impaired by pollutants and, to the extent currently possible, has identified causes and sources of these pollutants (see <http://www.nmenv.state.nm.us/swqb/303d-305b/2008-2010/>). Over the past few years, this effort has been expanded to include the evaluation of impacts of all sources of pollution of surface waters and of implementation programs to manage those impacts. Completion of TMDLs, UAA or other water quality planning for New Mexico's Water Quality Limited (WQL) assessment units is a necessary and high priority step in the overall process of assessing and managing these impacts and is essential to protect surface water quality in the watershed.

II. CONDITIONS GOVERNING THE PROCUREMENT**Sequence of Events**

Action	Responsibility	Date
Issue RFQ	NMED/SWQB	September 1, 2010
Deadline for quote submission	Applicant	October 4, 2010
Quote evaluation and finalist selection	Evaluation Committee	October 2010
Incorporation of selected quote into grant work plan and submitted to EPA	NMED/SWQB	October 2010
Work plan and grant approved by EPA	EPA	December 2010

Contact Person:

The contact person for this request for quotes is:

Heidi Henderson
Monitoring & Assessment Section
Surface Water Quality Bureau
New Mexico Environment Department
Harold Runnels Building
1190 St. Francis Drive, Suite N2109
P.O. Box 5469
Santa Fe, NM 87505
Telephone: 505-827-2901
E-mail Address: heidi.henderson@state.nm.us

All inquiries regarding the RFQ or its supporting documentation should be made to the contact person. Offerors may also consult with the contact person regarding minor details of format and workplan content.

Submission of Quotes

An original and three copies of the quote must be submitted by registered mail, email, or delivered in person for review to Heidi Henderson at the above address **by 4:30 PM, MDT on October 4, 2010. Electronically mailed quotes and hardcopy quotes received after this deadline will not be accepted.**

Pursuant to Section 13-1-116, NMSA 1978 of the Procurement Code, the contents of any quotes shall not be disclosed so as to be available to competing offerors during the negotiation process.

Quote Evaluation

Each quote will be evaluated by the Bureau. All quotes will be reviewed for compliance with the requirements stipulated in this RFQ. Quotes found not to be in substantial compliance will be eliminated from further consideration. Offerors submitting quotes may be provided an opportunity for discussion and revision of quotes after submission to the Bureau and prior to award, for the purpose of obtaining the best offers.

Contract Award

Before award of the contract, the quote selected must be approved by EPA as part of the Bureau's workplan for Federal Fiscal Year 2011 funding under Section 604(b) of the Act.

The Department reserves the right to reject any or all quotes when it is in the best interest of the State to do so.

Any contract resulting from this RFQ process will follow the format specified by the New Mexico Environment Department and the New Mexico Department of Finance and Administration. The Bureau reserves the right to negotiate with the selected organization, contract provisions in addition to those stipulated in this RFQ. All contracts are subject to the review and approval of the New Mexico Department of Finance and Administration (DFA) pursuant to 13-1-118, NMSA of the Procurement Code and DFA Rule 87-1, "Governing the Approval of Contracts for the Purchase of Professional Services".

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

III. QUOTE SPECIFICATIONS

1. The work program proposed to conduct water quality management planning must be for a one-year period. However, the work program may be contained within a broader program implemented over for a longer time period to show the desired end result of the program.
2. The quote should contain brief narrative summary describing the quote work program. In addition the quote should, at a minimum, document the following:
 - a) that the offeror is an eligible regional public comprehensive planning organization
 - b) that the proposed work is an eligible water quality planning activity as defined under sections 205(j) or 303(e)
 - c) that the proposed work is focused within the offeror's planning boundaries
 - d) that the proposed work results in clearly defined water quality planning product and the how the implementation of this resulting planning product could further the State's water quality goals
3. Identify necessary resources to carry out the entire contract.

For each water quality planning task/deliverable contained in the quote work plan, the following information should be provided:

- A brief narrative statement of purpose and task summary;
 - Estimated effort in staff time;
 - Estimated nature and amount of assistance to be requested from Bureau staff;
 - Estimated cost, including a separate identification of indirect costs. The cost responses shall be based on the offeror's attached fee schedules. The fixed cost shall include all fringe benefits and overhead, as well as subcontractor personnel, if appropriate. New Mexico gross receipts taxes, travel, and per diem are excluded from the proposed maximum hourly rates. They shall be shown separately on the invoice. However, at no time shall employee per diem rates be more than the allowable amounts posted by the State of New Mexico in 2.42.2 NMAC for each relevant fiscal year. Offerors must include a complete Time and Materials Fee Schedule for all activities listed in the sample project work plan. The offerors must include any other elements of cost that are appropriate for this quote.
4. Quotes must have assigned staff capable of effectively managing and completing the proposed work. To the extent possible, quotes should indicate how work will be completed utilizing in-house staff, without subcontracting work to outside entities. Quotes should contain a listing and identification of proposed project staff members, their responsibilities and relevant work history.
 5. Each task description should also include a description of and time frame for completion and submission of concrete, measurable outputs, including any interim outputs. Examples of acceptable outputs include, but are not limited to the following: Public meetings held to solicit data or input, field sampling dates and/or laboratory submission of water samples, preparation of reports summarizing how tasks were completed.

IV. EVALUATION FACTORS

Quotes will be evaluated based on the following factors:

Evaluation Criteria	Possible Points
Quote demonstrates that the applicant is an eligible regional public comprehensive planning organizations, the proposed activities are constitute water quality planning as defined by the CWA and the proposed work focuses within applicants' jurisdiction.	25
Quote contains a clear statement describing the proposed water quality management project.	25
Project goals are demonstrated to align well with SWQB water quality goals.	50
The project recognizes and addresses applicable TMDLs and/or 303(d) Listed waters in the watershed.	25
The quote demonstrates how the proposed project is outside the scope of activities addressed by the 319 (h) grant program.	25
The quote identifies the role and responsibilities of the Project Manager and documents the qualifications of other staff through relevant work history.	25
The quote recognizes the importance of stakeholder involvement and demonstrates the effective use of this resource in the project.	25
The description of the project tasks and associated schedule are clear and well developed.	50
Project timelines appear feasible.	25
Cost of the project is relative to the proposed scientific rigor in the planning project.	50
Cost of individual project components are fair relative to market conditions.	25
Total Points Possible	350

APPENDIX A
RELEVANT SECTIONS FROM THE CLEAN WATER ACT

205(j)

(1) The Administrator shall reserve each fiscal year not to exceed 1 per centum of the sums allotted and available for obligation to each State under this section for each fiscal year beginning on or after October 1, 1981, or \$100,000, whichever amount is the greater.

(2) Such sums shall be used by the Administrator to make grants to the States to carry out water quality management planning, including, but not limited to—

(A) identifying most cost effective and locally acceptable facility and non-point measures to meet and maintain water quality standards;

(B) developing an implementation plan to obtain State and local financial and regulatory commitments to implement measures developed under subparagraph (A);

(C) determining the nature, extent, and causes of water quality problems in various areas of the State and interstate region, and reporting on these annually; and

(D) determining those publicly owned treatment works which should be constructed with assistance under this title, in which areas and in what sequence, taking into account the relative degree of effluent reduction attained, the relative contributions to water quality of other point or nonpoint sources, and the consideration of alternatives to such construction, and implementing section 303(e) of this Act.

(3) In carrying out planning with grants made under paragraph (2) of this subsection, a State shall develop jointly with local, regional, and interstate entities, a plan for carrying out the program and give funding priority to such entities and designated or undesignated public comprehensive planning organizations to carry out the purposes of this subsection. In giving such priority, the State shall allocate at least 40 percent of the amount granted to such State for a fiscal year under paragraph (2) of this subsection to regional public comprehensive planning organizations in such State and appropriate interstate organizations for the development and implementation of the plan described in this paragraph. In any fiscal year for which the Governor, in consultation with such organizations and with the approval of the Administrator, determines that allocation of at least 40 percent of such amount to such organizations will not result in significant participation by such organizations in water quality management planning and not significantly assist in development and implementation of the plan described in this paragraph and achieving the goals of this Act, the allocation to such organization may be less than 40 percent of such amount.

303(e)

(1) Each State shall have a continuing planning process approved under paragraph (2) of this subsection which is consistent with this Act.

(2) Each State shall submit not later than 120 days after the date of the enactment of the Water Pollution Control Amendments of 1972 to the Administrator for his approval a proposed continuing planning process which is consistent with this Act. Not later than thirty days after the date of submission of such a process the Administrator shall either approve or disapprove such process. The Administrator shall from time to time review each State's approved planning process for the purpose of insuring that such planning process is at all times consistent with this Act. The Administrator shall not approve any State permit program under title IV of this Act for any State which does not have an approved continuing planning process under this section.

(3) The Administrator shall approve any continuing planning process submitted to him under this section which will result in plans for all navigable waters within such State, which include, but are not limited to, the following:

- (A) effluent limitations and schedules of compliance at least as stringent as those required by section 301(b)(1), section 301(b)(2), section 306, and section 307, and at least as stringent as any requirements contained in any applicable water quality standard in effect under authority of this section;
- (B) the incorporation of all elements of any applicable areawide waste management plans under section 208, and applicable basin plans under section 209 of this Act;
- (C) total maximum daily load for pollutants in accordance with subsection (d) of this section;
- (D) procedures for revision;
- (E) adequate authority for intergovernmental cooperation;
- (F) adequate implementation, including schedules of compliance, for revised or new water quality standards, under subsection (c) of this section;
- (G) controls over the disposition of all residual waste from any water treatment processing;
- (H) an inventory and ranking, in order of priority, of needs for construction of waste treatment works required to meet the applicable requirements of sections 301 and 302.

604(b)

RESERVATION OF FUNDS FOR PLANNING.—Each State shall reserve each fiscal year 1 percent of the sums allotted to such State under this section for such fiscal year, or \$100,000, whichever amount is greater, to carry out planning under sections 205(j) and 303(e) of this Act.

APPENDIX B

**EPA GUIDANCE ON REGIONAL PUBLIC COMPREHENSIVE PLANNING
ORGANIZATIONS**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

Attachment C

OCT 27 1987

MEMORANDUM

OFFICE OF
WATER

SUBJECT: Organizations that Qualify as Regional Public Comprehensive Planning Organizations (RPCPO) and Interstate Organizations (I/O) Under Section 205(j)(3) of the CWA, as Amended

FROM: F. Scott Bush, Director
Analysis and Evaluation Division (WH-586)

TO: Rick Claggett, Chief
Water Quality Management Section
U.S. EPA, Region VIII

I have reviewed the letter from the Wyoming Department of Environmental Quality which you forwarded with a request for our guidance on the eligibility of certain Wyoming agencies as RPCPOs and IOs. My conclusions which have been coordinated with the Office of General Counsel are as follows:

1. Municipal Governments - eligible.
2. County Governments - eligible.
3. 208 Designated State Agencies - ineligible. Pass through is not intended to fund arms of the State government. 208 designation is not a criterion for 205(j)(3) eligibility.
4. 208 Designated Federal Agencies - ineligible. Pass through is not intended to directly fund Federal Agency activities. This would not preclude RPCPOs/IOs contracting with Federal Agencies such as the Geological Survey to carry out their work plans for use of 205(j)(1) funds.
5. Conservation Districts - eligible, if the District is chartered with appropriate powers as a unit of local government, an independent substate agency, or as an interstate agency under an interstate agreement to which Wyoming is a party. If it operates as an arm of the State or Federal government it would not be eligible.

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6. Resource Conservation and Development (RC & D) Projects - ineligible, unless a "Project" is chartered with appropriate powers as a unit of local government, as an independent substate agency, or as an interstate organization under an interstate agreement to which Wyoming is a party and the Project is not an arm of the State or Federal government.
7. The Wyoming Association of Conservation Districts - ineligible, unless the Association is chartered with appropriate powers as a unit of local government, as an independent substate agency, or as an interstate organization under an interstate agreement to which Wyoming is a party and the Association is not an arm of the State or Federal government.
8. The Colorado River Basin Salinity Control Forum - ineligible, unless the Forum is chartered with appropriate powers as an independent interstate organization under an interstate agreement to which Wyoming is a party, or as a unit of local government or an independent substate agency and the Forum is not an arm of the State or Federal government.
9. Irrigation and/or Drainage Districts - eligible, if a District is chartered with appropriate powers as a unit of local government, an independent substate agency, or as an interstate organization under an interstate agreement to which Wyoming is a party. If it operates as an arm of the State or Federal government it would not be eligible.

If there are additional considerations with regard to the status of any of the listed organizations, please provide me the details. If you have questions, please call me (382-5389) or have your staff call Henry Cooke (382-7159).

APPENDIX C
CONTRACT TERMS AND CONDITIONS

STATE of NEW MEXICO

NAME OF AGENCY
PROFESSIONAL SERVICES CONTRACT # _____

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

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

A. The Contractor shall perform the following work:

B. Services will be performed (AT)(WITHIN)(LOCATION)

C. Performance Measures.

Contractor shall substantially perform the following Performance Measures:

1.

2.

The receipt of the deliverables contemplated under this Agreement shall assist the Agency in obtaining its goal(s) as set forth in its Strategic Plan on page(s)_____.

(or reference an Attachment 1, see below)

2. Compensation.

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

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

(**OR CHOICE – MULTI-YEAR** – A. The Agency shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work at the rate of _____ dollars (\$_____) in FYXX (USE FISCAL YEAR NUMBER TO DESCRIBE YEAR; DO NOT USE FY1, FY2, ETC.). The New Mexico gross receipts tax levied on the amounts payable under this Agreement in FYXX totaling (AMOUNT) shall be paid by the Agency to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (AMOUNT) in FYXX.**

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

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

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

3. Term.

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

4. Termination.

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the Agency's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the Agency is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; 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. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the Agency or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE STATE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*"

B 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.

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.

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

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 have the option to terminate

the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

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, Sections 13-1-28 through 13-1-199, NMSA 1978, 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 Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

18. Workers Compensation.

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

19. Records and Financial Audit.

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

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

20.

Indemnification.

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

21. New Mexico Employees Health Coverage.

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

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

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

22. Employee Pay Equity Reporting

Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this contract, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If contractor has (250) or more employees contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete

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

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

23. Invalid Term or Condition.

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

24. Enforcement of Agreement.

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

25.

Notices.

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

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

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

26. Authority.

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

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

By: _____ Date: _____
Agency

By: _____ Date: _____
Agency's Legal Counsel –Certifying legal sufficiency

By: _____ Date: _____
Contractor

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: _____ Date: _____
Taxation and Revenue Department

This Agreement has been approved by the DFA Contracts Review Bureau:

By: _____ Date: _____
DFA Contracts Review Bureau

Appendix A: Attachment 1

Scope of Work

Performance Measures

(Performance Measures should be based on the Scope of Work and must be tied to the Agency’s Strategic Plan. The Plan should be referenced in the Measures and the applicable part of the Strategic Plan copied below or in an attachment. To the extent possible based on the nature of the work to be performed, the Measures should be “Output” oriented and specify an “Outcome.”)

Performance Measures in Scope of Work shall contain measurable goals and objectives that are linked to the performance measures of the Agency’s Strategic Plan:

Example: Goal: Reduce or Increase or Other Service [insert blank].¹

Objective: To reduce or increase or Other Service [insert blank] by [blank] percent or by a certain time.²

Activities: [Insert what services the Contractor is expected to perform to accomplish goals and objectives including an evaluation of the process and the outcome as well as provides efficiency measures that relate efforts to outputs of services].

OR: Through satisfactory completion of the Scope of Work set forth above and submission of acceptable Deliverables, the Contractor will assist the Agency to meet the portions of its Strategic Plan set forth below (*insert additional language if necessary to describe how Contractor’s work will assist the Agency to fulfill its duties*).

¹ A goal is an “output” measure. It measures the quantity of a service provided. For example, the number of students graduated or promoted; the number of two-lane highways repaired; or the number of crimes investigated. It also can measure the quantity of a service provided that meets a certain quality requirement. For example, the number of students graduated or promoted who meet a minimum preset level of achievement; the number of miles of roads repaired to a minimum safety standard; or the number of criminal investigations performed that result in identification of a prime suspect.

² An accomplishment is an “outcome” measure. These indicators measure accomplishments or results that occur (at least partially) because the services were provided. For example, the percentage of students achieving a specified skill level in reading, the percentage of miles of roads in excellent, good or fair condition; or the percent reduction in serious crimes or the percent of residents who perceive their neighborhoods as safe.

APPENDIX D
CONFLICT OF INTEREST FORM

**CONFLICT OF INTEREST
PERSONS OR RETAINER ON CONTRACT**

The offeror (including subsidiaries and affiliates) shall disclose the number and type of all contracts with the Department of Energy or Department of Defense.

The Offeror shall provide the names of current subcontractors. Of current subcontractors identify those who hold current contracts with the Department of Energy or Department of Defense.

The offeror shall list its contracts and its subcontractors' contracts with the Federal Government for the past 10 years listed by agency including the date of the contract, contract amount, and a brief scope of work performed.

Last Name	First Name	Middle Initial
-----------	------------	----------------

Title

Company/Firm Name

Company Address:

Address: _____

P.O. Box/Drawer: _____

City: _____ State: _____ Zip Code+4: _____ - _____

Signature

Date

APPENDIX E
CAMPAIGN CONTRIBUTION DISCLOSURE FORM

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

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

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

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

The following definitions apply:

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

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

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

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

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

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

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

Name(s) of Applicable Public Official(s) if any: _____
(Completed by State Agency or Local Public Body)

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

--OR--

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

Signature

Date

Title (Position)