REQUEST FOR PROPOSALS
ISSUED BY THE STATE OF NEW MEXICO, ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT,
AND THE OL CONSERVATION COMMISSION
FOR LITIGATION SUPPORT SERVICES

I. PURPOSE OF THIS REQUEST FOR PROPOSALS

The Oil Conservation Commission (OCC), a statutory independent commission created and governed by the Oil and Gas Act, and *de facto* administratively attached to the Energy, Minerals and Natural Resources Department (EMNRD), on behalf of the State of New Mexico, seeks an attorney or law firm eligible to practice law in New Mexico, to provide litigation defense in the case of *Empire New Mexico, LLC v. the New Mexico Oil Conservation Commission,* D-101-CV-2026-00177; consolidated with *Goodnight Midstream Permian, LLC v. the New Mexico Oil Conservation Commission*, D-101-CV-2026-00269 (together, the Lawsuit), including all appellate cases arising therefrom. The OCC is the named appellee in the Lawsuit.

Any procurement which may result from this Request for Proposal (RFP) is valid for one year from date of issue as indicated in Section IX, Contact Person and Due Dates, below.

II. SCOPE OF WORK

A. Task Orders

The OCC shall identify the legal services necessary and Successful Offeror shall be assigned work on an “as-needed” basis under Task Orders approved and issued by the OCC. While the OCC anticipates the need to assign several Task Orders under the contract that may be awarded pursuant to this RFP, the OCC cannot and does not predict or guarantee the number or frequency of Task Order assignments that the successful Offeror(s) may be asked to complete.

The OCC shall define individual written Task Order requests to include: 1) the purpose of the proposed undertaking that requires legal services, including but not limited to; drafting pleadings, drafting motions, defending or taking depositions, expert witness identification/retention, supporting mediation, and potentially conducting trial and any appeals arising therefrom, among other litigation-related activities as determined by OCC; 2) a summary of the regulatory and statutory framework if applicable; 3) background information and witness identification as necessary; and 4) OCC’s expectations for the successful Offeror’s work product(s) and a desired timeline for the delivery of the work product(s).

The OCC shall review the successful Offeror’s proposed work plan and budget estimate in response to each Task Order request. Upon the OCC’s acceptance of a particular Task Order response from the successful Offeror, the OCC will issue a written notice to proceed with the Task Order.

B. Legal Services Tasks

Typical legal services requested by the OCC may include, but are not limited to the following:

1. Drafting a response to the Statements of Appellate Issues filed in the Lawsuit;
2. Conducting discovery, including drafting of written discovery requests, defending, and taking of depositions;
3. Drafting and filing dispositive motions in the Lawsuit or related matters;
4. Conferring with the OCC, its Chair and counsel on litigation strategy and tactics, as well as identifying acceptable parameters of settlement, if any;
5. Advising the OCC and its Chair on potential risks and benefits of litigation identified during the course and scope of representation;
6. Communicating with outside parties, including but not limited to the appellants and parties in interest related to any of the above as necessitated by the requirements of any individual project or as directed by the OCC and its Chair;
7. Providing the OCC and its Chair with brief written progress reports with each invoice; and
8. Appearing on behalf of, and as counsel for the OCC and its Chair as trial and appellate counsel, as circumstances require.

III. ELIGIBILITY REQUIREMENTS

This RFP is directed to individuals and firms who have the following minimum professional qualifications:

- Must be licensed as an attorney, in good standing, by the Supreme Court of New Mexico, or immediately eligible to represent the OCC as an attorney *pro hac vice*.
- Experienced in litigating complex cases, including those pertaining to the New Mexico Constitution and Executive Agency enabling statutes.

The successful Offeror shall also have these desired qualifications:

- Familiarity with the New Mexico Oil and Gas Act, New Mexico Oil and Gas Regulations, the New Mexico Constitution, and appellate practice in the State of New Mexico.

IV. PROPOSAL FORMAT AND CONTENTS

Proposals must contain sufficient information to provide the OCC with a thorough description of Offeror's qualifications to accomplish the activities described in the Scope of Work. The proposal MUST be on 8.5 x 11-inch paper and contain, at a minimum, all listed items in the sequence indicated and be organized in the following format:

1. Letter of transmittal that:

   a) identifies the name, title, telephone and fax numbers, and e-mail address of the person authorized to negotiate the contract on behalf of the Offeror;
   b) identifies the names, titles, telephone and fax numbers, and e-mail addresses of persons to be contacted for clarification;
   c) contains federal and state tax identification numbers;
   d) <u>explicitly</u> indicates acceptance of the terms and conditions of this RFP, including the terms and conditions of the attached draft Professional Services Agreement (Attachment 1), and the RFP evaluation factors;
   e) acknowledges receipt of all amendments to this RFP;
   f) is signed by the person authorized to contractually obligate the Offeror; and

2. Listing of qualifications, experience, education, and knowledge (refer to Proposal Evaluation Criteria.)

   a) include contact information for references who can attest to experience and quality of deliverables

3. Rates & costs.
   a) hourly rates for each position to perform work pursuant to Section II of this RFP. Hourly rates must include New Mexico Gross Receipts Tax (GRT).
   b) unit costs associated that may be necessary to perform work pursuant to Section II of this RFP. Costs must indicate actual or markup and must also include New Mexico GRT.

4. Signed Statement of Assurances (Attachment 2.)

5. Offerors shall complete, sign and submit with Offeror's proposal response the Campaign Contribution Form (Attachment 3) and disclose whether Offeror, a family member, or a representative of the Offeror has made a campaign contribution to an applicable public official during the two years prior to the RFP. Offeror shall complete the non-disclosure statement or make separate disclosures for all campaign contributions given by (1) the Offeror, (2) a family member, or (3) a representative of the Offeror.

6. New Mexico/Native American Resident Preferences – To ensure adequate consideration and application of NMSA 1978, Section 13-1-21, Offerors must submit a copy of their valid New Mexico/Native American Resident Preference Certificate or

its valid New Mexico/Native American Resident Veteran Preference with their proposals. Certificates for preferences must be obtained through the New Mexico Department of Taxation and Revenue http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx In accordance with NMSA 1978, Section 13-1-21(H), EMNRD shall not award any combination of New Mexico/Native American Resident Preferences.

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

V. CRITERIA AND EVALUATION POINT SUMMARY

EMNRD shall use the following criteria in the evaluation of proposals and in the selection of the successful Offeror.

No.	Evaluation Factor	Points Available
1.	Offeror's experience with complex litigation.	50 points
2.	Offeror's experience representing Executive Agencies. in appellate matters.	20 points
3.	The potential need to waive/evaluate conflicts as a result of Offeror's representation of other clients. Offeror shall disclose any potential conflicts (either actual or potential) representing the Parties and points will be awarded based on the lack of such conflicts.	10 points
4.	Offeror's hourly rate points will be awarded based on overall rate structured, proposals from law firms will be assessed based on the rate structure of the identified legal team.	10 points
5.	Offeror's other costs. Points will be awarded based on an evaluation of the potential costs Offeror intends to pass through in connection with this representation.	10 points
	Total possible Points	100
	*New Mexico/Native American Resident	8 points*
	*New Mexico/Native American Resident Veteran Preference	10 points*

*Eligible Offerors may receive points for being a Resident Vendor or a Resident Veteran, but not both.

VI. EVALUATION PROCESS

The evaluation process will follow the steps listed below:

1. Three Evaluation Team members will document contents of competitive sealed proposals after the submittal deadline.

2. The Evaluation Team will review proposals for compliance with the mandatory requirements stated within this RFP. Proposals deemed non-responsive will be eliminated from further consideration.

3. The Contact Person may contact Offerors for clarification of the proposal.

4. The Evaluation Team will evaluate responsive proposals based on the criteria in Section VI and will select responsive Offeror(s) with the highest total scores as finalist Offeror(s).

5. The Evaluation Team will consult with listed references and select the finalist Offeror(s) whose proposal and references is/are most advantageous to EMNRD, for award. EMNRD may rely upon references to distinguish between similarly qualified applicants. Please note, however, that a deficiency in any one factor may be grounds for rejection regardless of overall score.

VII. CONTRACT AWARD AND DURATION

EMNRD may issue a contract under the terms of the attached draft Professional Services Agreement (PSA) and in accordance with this RFP. Any PSA awarded as a result of this RFP shall not be binding until approved by both EMNRD and the General Services Department, Contracts Review Bureau. Award of an agreement does not obligate EMNRD to award any task orders to the successful Offeror.

The contract period for PSAs shall extend from the date of contract approval by Contracts Review Bureau, and may last no longer than four years, including amendments.

VIII. CONTACT PERSON AND DUE DATES

Any inquiries or requests regarding this procurement must be submitted in writing to the OCC Contact Person listed below. Offerors may contact ONLY the Contact Person regarding this RFP. Other state employees or Evaluation Committee members do not have authority to respond on EMNRD's or OCC's behalf.

The Contact Person is:

Sheila Apodaca
OCC Clerk
Oil Conservation Commission
Energy Minerals & Natural Resources Department
State of New Mexico
1220 South St. Francis Drive, 3rd Floor
Santa Fe, NM 87505
505-699-8358
sheila.apodaca@emnrd.nm.gov

Deadlines for Written Questions

Potential Offerors may submit written questions to the Contact Person as to the intent or clarity of this RFP until 5 p.m. MDT on September 4, 2026. All written questions must be addressed to the Contact Person as indicated above. Questions shall be clearly labeled and shall cite the Section(s) in the RFP or other document which form the basis of the question.

The OGC will post written responses to such questions on the EMNRD website: https://www.emnrd.nm.gov/officeofsecretary/request-for-proposals/ by September 8, 2026.

Proposal Due Date

Potential Offerors shall submit electronically in PDF format to the OCC Contact Person at the above address no later than 5 p.m. MDT, September 11, 2026. Proposals must be submitted in the format specified above in Section V, Proposal Contents. Proposals must be received by the stated data and time to be considered. The OCC shall not accept proposals received after this date and shall make absolutely no exceptions for proposals not received at the above location by the appointed time.

Protest Period

Pursuant to NMSA 1978, § 13-1-172 and applicable procurement regulations, Offerors who are not selected have the right to timely protest the procurement. Protests must be written and must include: the name and address of the protestor and the name of the procurement being protested; a statement of the grounds for protest including appropriate supporting exhibits; and the ruling requested from EMNRD. The protest period begins on the day after notice of selection/non-selection and ends at 5 p.m. 15 days after notice of selection/non-selection. Protests must be delivered to: Miguel Gallegos, Chief Procurement Officer, EMNRD Administrative Services Division, 1220 S. St. Francis Drive, Santa Fe, NM, 87505.

IX. NOTICES

Award of agreements is contingent upon sufficient appropriations and authorization being made by the State of New Mexico or the lead federal agency providing federal funding.

Offerors must include New Mexico Gross Receipts Tax (GRT) costs as part of their responses. Any response that does not clearly indicate GRT included in the cost may be deemed non-responsive and rejected.

OCC may cancel this RFP and reject any and all proposals when it is in the State of New Mexico's best interests.

The OCC may conduct discussions with Offerors who submit proposals, but may also accept proposals without such discussions.

The New Mexico Procurement Code, NMSA 1978, Sections 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 bribes, gratuities, and kickbacks.

Attachment 1

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, **OIL CONSERVATION COMMISSION, a statutory independent commission created and governed by the Oil and Gas Act, and *de facto* administratively attached to the ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT**, 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 following work:

2. Compensation.

A. The Agency shall pay to the Contractor in full payment for services satisfactorily performed at the rates attached in Exhibit A to this Agreement per hour, 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 GSD/SPD. 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.

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 GSD/SPD. 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. Contractor shall also provide documentation of hours expended on the services provided. 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. <u>Term.</u>

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE GSD/SPD Contracts Review Bureau. This Agreement shall terminate on <Choice 1>: **(DATE), <Choice 2>** four years from the date this Agreement is signed by the GSD/SPD Contracts Review Bureau, 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. <u>Termination.</u>

A. <u>Grounds</u>. 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. <u>Notice; Agency Opportunity to Cure.</u>

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. It is not the intention of the parties entering this contract to prohibit Contractor from accepting or continuing representation of parties with interests adverse to the State, the Agency or entities administratively attached to the Agency, during the term of this contract. Contractor will not accept or undertake representation adverse to the Agency, including entities administratively attached to the Agency, with regard to the specific subject matter of this Agreement.

Notwithstanding the foregoing, it is understood and agreed by the parties that the Contractor from time to time represents certain EMNRD-regulated entities and/or entities working within EMNRD-regulated industries. Nothing in this agreement is intended to preclude Contractor from appearing before the Agency, or entities administratively attached to the Agency, representing these clients generally. The Agency, or entities administratively attached to the Agency, agree to waive any conflict of interest that might arise from the Contractor's representation of these clients in matters or appeals before the Agency, or entities administratively attached to the Agency, and consent to Contractor representing clients in matters which are not directly adverse to matters in which the Contractor represents the Agency. The subject matter of this potential representation (the scope, application and interpretation of the forced pooling of interests and related regulations) does not overlap with the legal and factual subject matter and interests at issue in the Empire New Mexico, LLC v. the New Mexico Oil Conservation Commission, D-101-CV-2026-00177; consolidated with Goodnight Midstream Permian, LLC v. the New Mexico Oil Conservation Commission, D-101-CV-2026-00269.

Apart from the matters disclosed above the Contractor represents and warrants that any conflicts will be addressed as required by the Rules of Professional Responsibility.

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. Insurance.

Contractor certifies that, by signing this Agreement, it will establish and maintain professional liability insurance covering Contractor's negligent acts, errors and omissions. Contractor shall provide Agency with a copy of the insurance certificate no later than ten (10) days after this Agreement's effective date. At Agency's request, Contractor shall also provide Agency with a copy of the insurance policy, or relevant portions thereof. Contractor shall notify Agency thirty (30) days before cancellation or expiration of the professional liability policy.

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 GSD/SPD Contracts Review Bureau below.

By:____ Date:______________

Energy, Minerals and Natural Resources Department
Cabinet Secretary or Designee

By:____ Date:______________

Oil Conservation Commission
Cabinet Secretary or Designee

By:____ Date:______________

Legal Counsel – Certifying legal sufficiency

By:____ Date:______________

Chief Financial Officer

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/or compensating taxes.

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

By: ____ Date:______________

Taxation and Revenue Department

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

By:____ Date:_____________

GSD/SPD Contracts Review Bureau

Attachment 2
STATEMENT OF ASSURANCES FORM

Each Offeror MUST complete this form and return it with Offeror's proposal or OCC will deem the proposal as non-responsive. By signing this form below, Offeror acknowledges and agrees to the following:
This RFP does not commit the State of New Mexico (State) to pay any costs incurred in the in the preparation or submission of this proposal. Any cost incurred by the Offeror in developing a proposal response shall be borne solely by the Offeror. Offeror understands that that Offeror's proposal shall become part of the official file on this matter without obligation to the State. Issuance of this RFP does not constitute an award commitment on the part of the State.
Offeror shall examine all contract documents, noting particularly all stipulations that in any way affect contract work. Failure of an Offeror to acquaint itself fully with the amount and nature of the work required to fulfill all terms of the contract documents shall not be considered a basis for extra compensation after a contract has been awarded.
Offeror represents and warrants to the State that Offeror has the staff, facilities, and competence to furnish the required services. The State may investigate Offeror's adequacy of the staff, facilities, and competence. For this purpose, representatives of the State may make an inspection of Offeror's facilities, equipment, etc., and interview staff.
In order to receive consideration, Offeror's proposal must be signed by an officer having the authority to bind Offeror.
Offeror agrees to comply with all relevant federal and state laws and regulations or rules.
New Mexico Employees Health Coverage: If Offeror has, or grows to, six or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six-month period during the term of any Agreement which may result from this RFP, Offeror agrees, by submitting a proposal, to have in place, and agrees to maintain for the Agreement's term, 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 Offeror and the state exceed $250,000. Offeror agrees to maintain a record of the number of employees who have: 1) accepted health insurance; 2) declined health insurance due to other health insurance coverage already in place; or 3) declined health insurance for other reasons. These records are subject to review and audit by a representative of the State. Offeror agrees to advise all employees of the availability of state publicly financed health care coverage programs.
Application of Resident Preference and Veterans Preference (NMSA 1978, Sections 13-1-21 and 22): Offeror acknowledges Offeror must provide a copy of either the Resident Preference or Veterans Preference Certificate to be eligible for preference points.
____ Offeror Signature Date:
Offeror's Printed Name and Title: __________________________________

Attachment 3

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, et seq. NMSA 1978 and § 13-1-191.1 NMSA 1978 (2006), as amended by Laws of 2007, Chapter 234, a prospective contractor subject to this section shall disclose all campaign contributions given by the prospective contractor or a family member or representative of the prospective contractor to an applicable public official of the state or a local public body during the two years prior to the date on which a proposal is submitted or, in the case of a sole source or small purchase contract, the two years prior to the date on which the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor or a family member or representative of the prospective contractor to the public official exceeds two hundred fifty dollars ($250) over the two-year period. A prospective contractor submitting a disclosure statement pursuant to this section who has not contributed to an applicable public official, whose family members have not contributed to an applicable public official or whose representatives have not contributed to an applicable public official shall make a statement that no contribution was made.

A prospective contractor or a family member or representative of the prospective contractor shall not give 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 during the pendency of negotiations for a sole source or small purchase contract.

Furthermore, a solicitation or proposed award for a proposed contract may be canceled 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 if a prospective contractor fails to submit a fully completed disclosure statement pursuant to this section; or a prospective contractor or family member or 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.

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

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

The following definitions apply:

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

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

“**Family member**” means a 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 proces**s” 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.

“**Prospective contractor**” means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code [Sections 13-1-28 through 13-1-199 NMSA 1978] or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or 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:_Michelle Lujan Grisham, Governor
Howie Morales, Lieutenant Governor
(This field must be completed by the issuing State Agency. In most cases, the official identified will be the current Governor of New Mexico and Lieutenant Governor. If a local public body is using this template for their RFPs, it must complete this field with the applicable elected official(s).)

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)