



NEW MEXICO DEPARTMENT OF
CULTURAL AFFAIRS

REQUEST FOR PROPOSALS (RFP)

**EXHIBIT PLANNING, DESIGN, FABRICATION AND
INSTALLATION SERVICES**

RFP# 24 505 2000 50178

RFP Release Date: September 1, 2023

Questions Due Date: September 15, 2023

Proposal Due Date: October 2, 2023

ELECTRONIC-ONLY PROPOSAL SUBMISSION

**REQUEST FOR PROPOSALS
ISSUED BY THE
NEW MEXICO DEPARTMENT OF CULTURAL AFFAIRS
FOR
EXHIBIT PLANNING, DESIGN, FABRICATION AND INSTALLATION SERVICES**

A. Purpose

The New Mexico Department of Cultural Affairs (Department or DCA), a department of the state government of New Mexico, is seeking Offeror(s) to provide **exhibit design and fabrication services for the planning, design, fabrication, and installation of new interpretive exhibits and the rehabilitation of existing exhibits at various Museums, Historic Sites and Cultural Institutions throughout New Mexico.** Museum locations include Santa Fe, Albuquerque, Las Cruces and Alamogordo. Historic Site locations include Fort Sumner, Lincoln, Fort Stanton, Coronado, Jemez, Alcalde, Radium Springs, and Mesilla.

The Department seeks proposals from exhibit design and fabrication companies, with extensive experience in exhibit planning, graphic design and fabrication, multi-media exhibit production and installation, and rehabilitation of exhibits depicting various themes related to museums and historic sites: art, history, cultural history, cultural resources, society and the natural world. Offerors may include subcontractors as part their single RFP submission if needed to address needs such expertise in multi-media exhibits or to add a design or fabrication partner.

No pricing or budget is required to be submitted for this RFP. The Department may enter into multiple Professional Services Agreements (PSAs) with successful Offerors who demonstrate expertise and experience with the planning, design, fabrication, and installation of new interpretive exhibits and the rehabilitation of existing exhibits. This may result in multiple task orders (Task Orders) developed on a case-by-case basis as needs are identified over the course of the PSAs. Example of typical projects include new internal and outdoor exhibits, interpretive panels, interior displays, and exterior weatherproof displays and signs, as well as rehabilitating of existing exhibits, panels and displays, etc. The Department shall coordinate closely with the awarded Offeror(s) during all phases of planning, design, production, and installation. The successful Offeror(s) shall conduct all work based on Task Orders as specified below.

Any proposal submitted in response to this Request for Proposals (RFP) is valid for one year from the date of receipt of proposal as specified in Section H, Contact Person and Due Dates, below.

B. Scope of Procurement

Contract work shall be conducted on a project-by-project, “as needed” basis pursuant to Task Orders as issued and approved by the Department. The Department will provide relevant research information about the state museum, historic site, or cultural facility in which the project shall take place, the themes to be interpreted, the type of design required and the type of exhibits, displays, panels and signs within the Task Order. The scope of work for which Task Orders will be issued are generally set forth below. Written Task Orders will more specifically describe the contract work to be performed.

On an “as-needed” basis, successful Offeror(s) shall develop and submit for approval by the Department a written timetable and a budget to perform the work specified by the Task Order. The Department’s written approval and purchase order shall signify authorization to commence work on that Task Order. The successful Offeror(s) shall furnish all labor, materials, facilities, services, equipment, and administration necessary to successfully perform the task(s) requested by the Task Order issued for a particular project.

While the Department anticipates the need to assign several Task Orders, the Department 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. During the term of the contract, each identified project will be presented to the successful Offeror(s) with a scope of work, schedule, and proposed fee as a Task Order. No work shall begin without a signed Task Order and approved purchase order.

Not all Task Orders will include all phases of the work or all elements of each phase of the work outlined below; instead, for each Task Order, the Department will define the work to be done, which may include some or all of the items covered in the Scope of Work. Thus, while some successful Offeror(s) may provide a wide variety of services, other successful Offeror(s) may provide more limited types of services. Price shall be determined on a project-by-project basis through formal negotiations related to each Task Order. Moreover, the frequency and complexity of Task Orders that any successful Offeror may be asked to complete shall be within the Department’s sole discretion.

C. Scope of Work

For each Task Order, as appropriate, the successful Offeror(s) shall, in consultation with Department staff:

- a. Plan new interpretive and educational exhibits in accordance with sound museum guidelines, interpretation principles and relevant architectural constraints. Exhibits may include wall panels, artifact display cases, dioramas, maps, murals, interactive displays (such as use of a computer, monitors, projectors or virtual reality/augmented reality interface devices for interactive exhibits, audio, video, and other digital media production). Exhibits may be long-term installations, or rotating, or travelling exhibits.

- b. Develop/design:
 - 1) interpretive exhibits in accordance with Department-provided interpretive themes, topics, and budget parameters; and
 - 2) detailed drawings, models, and other relevant demonstrations of proposed exhibits, including color illustrations if applicable.
- c. Acquire or create all graphic materials, artifacts, and other objects, as needed, to complete exhibits.
- d. Fabricate/install:
 - 1) exhibits, exhibit items, displays, and signs, after Department approval; and
 - 2) coordinate installation with staff at the appropriate facility.
- e. For existing exhibits in need of rehabilitation:
 - 1) evaluate existing situation, plan and recommend changes;
 - 2) prepare drawings or models;
 - 3) acquire necessary materials, matching colors, style and materials of existing exhibit;
 - 4) curate objects on display; and
 - 5) fabricate and install final product.

D. Compensation

The actual amount available for contracts resulting from this RFP is unknown. This is a Multiple Source Award RFP. Award as a result of this RFP does not guarantee any work being ordered under a resultant contract. On a project-by-project, "as needed" basis, the Department will negotiate a fee determined to be fair and reasonable for the scope of work (Task Order(s)) for each project.

E. Definitions of Terminology

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

1. "**Award**" means the final execution of the contract document.

2. “**Confidential**” means confidential financial information concerning Offeror’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, NMSA 1978, Sections 57-3-A-1 through 57-3A-7. See also 1.4.1.45 NMAC. The following items may **not** be labelled as confidential: Offeror’s submitted staff/personnel resumes/bios (excluding personal information such as personal telephone numbers and/or home addresses) and other submitted data that is **not** confidential financial information or that qualifies under the Uniform Trade Secrets Act.
3. “**Contract**” means any agreement for the procurement of items of tangible personal property, services, or construction.
4. “**Contractor**” means any business having a contract with a state agency or local public body.
5. “**Determination**” means the written documentation of a decision of a procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.
6. “**Desirable**” – the terms “may”, “can”, “should”, “preferably”, or “prefers” identify a desirable or discretionary item or factor.
7. “**Electronic Submission**” means a successful submittal of Offeror’s proposal.
8. “**Electronic Version/Copy**” means a digital form consisting of text, images, or both readable on computers or other electronic devices.
9. “**Evaluation Committee/Team**” means a body appointed to perform the evaluation of Offerors’ proposals.
10. “**Evaluation Committee/Team Report**” means a report prepared by the Procurement Manager and the Evaluation Committee to support the Committee’s recommendation for contract award. It will contain scores and written evaluations of all responsive Offeror proposals.
11. “**Final Award**” means, in the context of this Request for Proposals and all its attendant documents, that point at which the final required signature on the contract(s) resulting from the procurement has been affixed to the contract(s) thus making it fully executed.
12. “**Finalist**” means an Offeror who meets all the mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

13. **“Mandatory”** – the terms “must”, “shall”, “will”, “is required”, or “are required” identify a mandatory item or factor. Failure to meet a mandatory item or factor may result in the rejection of the Offeror’s proposal.
14. **“Minor Irregularities”** are matters of form rather than substance evident from the proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other Offerors; that is, when there is no effect on price, quality, or quantity.
15. **“Multiple Source Award”** means an award of an indefinite quantity contract for one or more similar services, items of tangible personal property, or construction to more than one Offeror.
16. **“Offeror”** is any person, corporation, or partnership who chooses to submit a proposal.
17. **“Procurement Manager”** means any person or designee authorized by a state agency or local public body to enter or administer contracts and make written determinations with respect thereto.
18. **“Project”** means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved and project acceptance is given by the project executive sponsor.
19. **“Redacted”** means a version/copy of the Offeror’s proposal with the information considered proprietary or confidential (as defined by NMSA 1978, Sections 57-3A-1 to 57-3A-7, and 1.4.1.45 NMAC and summarized herein and outlined in Section II.C.8 of this RFP) blacked-out BUT NOT omitted or removed.
20. **“Request for Proposals (RFP)”** means all documents, including those attached or incorporated by reference, used for soliciting proposals.
21. **“Responsible Offeror”** means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation, and experience are adequate to make satisfactory delivery of the services or items of tangible personal property described in the proposal.
22. **“Responsive Offer”** or means an offer that conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to price, quality, quantity, or delivery requirements.
23. **“Staff”** means any individual who is a full-time, part-time, or an independently contracted employee with the Offerors’ company.

24. **“State (the State)”** means the State of New Mexico.
25. **“State Agency”** means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution, or official of the executive, legislative, or judicial branch of the government of the State of New Mexico.
26. **“Agency”** or **“Department”** means the New Mexico Department of Cultural Affairs (DCA).
27. **“State Purchasing Agent”** means the Director of the Purchasing Division of the General Services Department.
28. **“Statement of Concurrence”** means an affirmative statement from the Offeror to the required specification agreeing to comply and concur with the stated requirement(s). This statement shall be included in Offerors proposal. (*E.g.* “We concur”, “Understands and Complies”, “Comply”, “Will Comply if Applicable”, etc.)
29. **“Unredacted”** means a version/copy of the proposal containing all complete information; including any that the Offeror would otherwise consider confidential, such copy for use only for the purposes of evaluation.
30. **“Written”** means printed on standard 8 ½ x 11 inch paper, in hard copy or electronic format. Larger paper is permissible for charts, spreadsheets, etc.

F. General Conditions Governing the Procurement

1. Acceptance of Conditions Governing the Procurement

Offerors must indicate their acceptance of the Conditions Governing the Procurement in their Letter of Transmittal. Submission of a Proposal constitutes acceptance of the Evaluation Factors (Proposal Evaluation) contained in this RFP.

2. Incurring Cost

Any cost incurred by the Offerors in preparation, transmittal, and/or presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror.

3. Prime Contractor Responsibility

Any contractual agreement that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of all requirements of the contractual agreement with the Department which may derive from this RFP. Payment(s) pursuant to a contractual agreement entered into as a result of this RFP will be made only to the prime contractor.

4. Subcontractors/Consent

The use of subcontractors is allowed. The prime contractor shall be wholly responsible for the entire performance of the contractual agreement whether or not subcontractors are used. Additionally, the prime contractor must receive approval, in writing, from the Department awarding any resultant contract, before any subcontractor is used during the term of any contract which may result from this RFP.

5. Amended Proposals

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

6. Offeror's Rights to Withdraw Proposal

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request addressed to the Procurement Manager and signed by the Offeror's duly authorized representative.

The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations, 1.4.1.5 and 1.4.1.36 NMAC.

7. Proposal Offer Firm

Responses to this RFP, including proposal prices for services, will be considered firm for 365 days after the due date for receipt of proposals.

8. Disclosure of Proposal Contents

The contents of all submitted proposals will be kept confidential until the final award has been completed by the Department. At that time, all proposals and documents pertaining to the proposals will be available for public inspection, *except* for proprietary or confidential material as follows:

a. *Proprietary and Confidential information is restricted to:*

- 1) confidential financial information concerning the Offeror's organization; and
- 2) information that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, NMSA 1978, Sections 57-3A-1 through 57-3A-7.

- b. Proprietary or confidential data shall be readily separable from the proposal to facilitate eventual public inspection of the non-confidential portion of the proposal.

IMPORTANT: The price of products offered or the cost of services proposed SHALL NOT be designated as proprietary or confidential information.

If a request is received for disclosure of proprietary or confidential materials, the Department shall examine the request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of proprietary or confidential information.

9. No Obligation

This RFP in no manner obligates the State of New Mexico or any of its Agencies, including the Department, to the use of any Offeror's services until a valid written contract is awarded and approved by appropriate authorities.

10. Termination

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the Department determines such action to be in the best interest of the State of New Mexico.

11. Sufficient Appropriation

Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such terminations will be affected by sending written notice to the Contractor. The Department's decision as to whether sufficient appropriations and authorizations are available will be accepted by the Contractor as final.

12. Legal Review

The Department requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror's concerns must be promptly submitted in writing to the attention of the Procurement Manager.

13. Governing Law

This RFP and any agreement with an Offeror which may result from this procurement shall be governed by the laws of the State of New Mexico.

14. Basis for Proposal

Only information supplied in writing by the Procurement Manager or contained in this RFP shall be used as the basis for the preparation of Offeror proposals.

15. Contract Terms and Conditions

The contract between the Department and a Contractor will follow the format specified by the Department and contain the terms and conditions set forth in the draft contract (Attachment 4). However, the Department reserves the right to negotiate provisions in addition to those contained in this RFP (draft contract) with any Offeror. The contents of this RFP, as revised or supplemented, and the

successful Offeror's proposal will be incorporated into and become part of any resultant contract.

The Department discourages exceptions from the contract terms and conditions as set forth in the RFP draft contract. Such exceptions may cause a proposal to be rejected as nonresponsive when, in the sole judgment of the Department (and its evaluation team), the proposal appears to be conditioned on the exception, or correction of what is deemed to be a deficiency, or an unacceptable exception is proposed which would require a substantial proposal rewrite to correct.

Should an Offeror object to any of the terms and conditions as set forth in the RFP draft contract (Attachment 4) strongly enough to propose alternate terms and conditions despite the above, the Offeror must propose specific alternative language. The Department may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions of the draft contract are not acceptable to the Department and will result in disqualification of the Offeror's proposal.

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

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

16. Offeror's Terms and Conditions

Offerors must submit with the proposal a complete set of any additional terms and conditions they expect to have included in a contract negotiated with the Department.

17. Contract Deviations

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

18. Offeror Qualifications

The Evaluation Committee may make such investigations as necessary to determine the ability of the potential Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of

any potential Offeror who is not a Responsible Offeror or fails to submit a Responsive Offer as defined in NMSA 1978, Sections 13-1-83 and § 13-1-85.

19. Right to Waive Minor Irregularities

The Evaluation Committee reserves the right to waive minor irregularities, as defined above. The Evaluation Committee also reserves the right to waive mandatory requirements, provided that all the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

20. Change in Contractor Representatives

The Department reserves the right to require a change in Contractor representatives if the assigned representative(s) is (are) not, in the opinion of the Department, adequately meeting the needs of the Department.

21. Notice of Penalties

The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-1998, imposes civil, and misdemeanor and felony criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

22. Agency Rights

The Department in agreement with the Evaluation Committee reserves the right to accept all or a portion of a potential Offeror's proposal.

23. Right to Publish

Throughout the duration of this procurement process and contract term, Offerors and contractors must secure from the Department written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement or contracts deriving from this procurement. Failure to adhere to this requirement may result in disqualification of the Offeror's proposal or removal from the contract.

24. Ownership of Proposals

All documents submitted in response to the RFP shall become property of the State of New Mexico. If the RFP is cancelled, all responses received shall be destroyed by the Department.

25. Confidentiality

Any confidential information provided to, or developed by, the Contractor in the performance of the contract resulting from this RFP shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Department.

The Contractor(s) agrees to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without the Department's written permission.

26. Electronic mail address required

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail address to receive this correspondence.

27. Use of Electronic Versions of this RFP

This RFP is being made available by electronic means. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the Department, the Offeror acknowledges that the version maintained by the Department shall govern.

28. New Mexico Employees Health Coverage

- a. If the 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 the contract, Offeror must agree to have in place, and agree to maintain for the term of the contract, health insurance for those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
- b. Offeror must agree to maintain a record of the number of employees who have (1) accepted health insurance; (2) decline health insurance due to other health insurance coverage already in place; or (3) decline health insurance for other reasons. These records are subject to review and audit by a representative of the State.
- c. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information <https://bewellnm.com>.

29. Campaign Contribution Disclosure Form

Offeror must complete, sign, and return the Campaign Contribution Disclosure Form (Attachment 1) as a part of their proposal. This requirement applies regardless of whether a covered contribution was made or not made for the positions of Governor and Lieutenant Governor or other identified official. Failure to complete and return the signed, unaltered form will result in Offeror's disqualification.

30. Disclosure Regarding Responsibility

Any prospective Contractor and any of its Principals who enter into a contract greater than \$60,000.00 with any State Agency, including the Department, or local public body for professional services, tangible personal property, services, or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company:

(1) is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency, or local public body;

(2) has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:

(a) the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract;

(b) violation of federal or state antitrust statutes related to the submission of offers; or

(c) the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of federal criminal tax law, or receiving stolen property;

(3) is presently indicted for, or otherwise criminally or civilly charged by any (federal state, or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure;

(4) has, preceding this offer, been notified of any delinquent federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.

(a) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(b) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded;

(5) have within a three-year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body.

b. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.

c. The Contractor shall provide immediate written notice to the State Purchasing Agent or other party to this Agreement if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.

d. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will render the Offeror nonresponsive.

e. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.

f. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state, or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the State Purchasing Agent or other party to this Agreement. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the State Purchasing Agent or Central Purchasing Officer may terminate the involved contract for cause. Still further the State Purchasing Agent or Central Purchasing Officer may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the State Purchasing Agent or Central Purchasing Officer.

G. Proposal Format and Contents

Proposals must contain sufficient information to provide the Department with a thorough description of Offeror's qualifications to accomplish some or all of the activities described in the Scope of Work. **Offerors shall submit only one proposal in response to this RFP.**

All proposals shall be a PDF document formatted with 8.5" x 11" page layouts, no more than 75 pages in length (not including the letter of transmittal and attachments), single-spaced, 10-point type (or larger). **The proposal MUST contain, at a minimum, all listed items in the sequence indicated below 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 a contract on behalf of the Offeror;
 - b. identifies the names, titles, telephone and fax numbers, and e-mail addresses of person(s) to be contacted for clarification;
 - c. explicitly indicates acceptance of the terms and conditions of this RFP and its evaluation factors;
 - d. acknowledges receipt of any and all amendments to this RFP; and
 - e. is signed by the person authorized to contractually obligate the Offeror.
2. Summary of the full extent of relevant corporate experience with state government, non-profits, and the private sector. The experience of all proposed subcontractors must also be described. The summary must describe how the Offeror and proposed subcontractors have supplied expertise for similar contracts and shall indicate the extent of their experience, expertise, and knowledge as a provider of planning, design, fabrication and installation of new interpretive exhibits and the rehabilitation of existing exhibits.
3. Description of at least three previous projects that indicate the quality, creativity and originality of the Offeror and all proposed subcontractors in planning, designing, fabricating, rehabilitating, and installing indoor and outdoor exhibits.
4. Names and qualifications of key personnel to be assigned to the work, including a brief bio, Curriculum Vita, resumes, permits, licenses, and certificates that qualify Offeror for this work, as well as any subcontractor, or firm the Offeror may use to complete assigned tasks.
5. Completed, signed Campaign Contribution Form (Attachment 1) -- Offeror shall complete, sign, and submit with Offeror's proposal response the Campaign Contribution Disclosure Form 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. Completed, signed Statement of Assurances Form (Attachment 2).

7. References - Offerors must provide a minimum of three business references from similar contract services performed for private, state, or large local government clients within the last three years. Offerors are required to submit the Reference Questionnaire (Attachment 3) to the business references they list. The business references must submit the Reference Questionnaire directly to the Contact Person listed in Section H below. Offerors are responsible for ensuring that the completed forms are received by or before the proposal submission deadline for inclusion in the evaluation process. Business references that are not received, or are not complete, may adversely affect the Offeror's score in the evaluation process. The Evaluation Team may contact any or all business references for validation of information submitted.

8. Response to Contract Terms and Conditions (Attachment 4)
 - A. If Offeror has no response to the Contract Terms and Conditions, please include a statement in your proposal stating so.

 - B. Offerors must otherwise submit with their proposal a complete response to the Contract Terms and Conditions, including any proposed additional terms and conditions expected to be included in a Contract negotiated with the Department.

9. **New Mexico/Native American Resident Preferences** – if eligible, respondents will receive points all allowed by New Mexico preference laws.
 - A. **New Mexico Resident Business Preference / Native American Resident Preference**

If an Offeror has provided a copy of its New Mexico Resident Preference Certificate or Native American Resident Preference Certificate, the points awarded will be calculated as 8% of the total points available in this RFP.

 - B. **New Mexico/Native American Resident Veteran Preference**

If an Offeror has provided a copy of its New Mexico Resident Veteran Preference Certificate or Native American Resident Veteran Preference Certificate the points awarded will be calculated as 10% of the total points available in this RFP.

Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis. Proposals will also be evaluated on general organization and readability (see evaluation criteria, below).

H. Proposal Evaluation

The Evaluation Team shall use the following criteria in the evaluation of proposals and in the selection of the successful Offeror.

| Criteria | Points Available |
|---|-------------------------|
| <p>Organizational Experience and Technical Capabilities</p> <p>This criterion considers factors of the Offeror’s overall experience in supplying services similar to those outlined in the Scope of Work. It also considers the capabilities of the Offeror for carrying out all phases of the contract work as it pertains to assets, specific products, and equipment to be used in information collecting and processing, information analysis, and final production. This factor also considers available facilities (such as offices, studios, and manufacturing facilities) dedicated to information collection, product design, and manufacturing.</p> <p>Evaluation standards:</p> <ul style="list-style-type: none"> • description of overall organizational experience, including years in business, and breadth and scope of project types; • description of design facilities, software and equipment; • description of product manufacturing facilities and equipment. | <p>30 points</p> |
| <p>Work Quality</p> <p>Demonstrate history of quality, creativity, and originality in past projects similar to those described in the Scope of Work.</p> <p>This criterion considers the Offeror’s experience and execution of similar work and must be demonstrated with at least three examples of past performance.</p> <p>This criterion will be evaluated based on:</p> <ul style="list-style-type: none"> • at least three examples of past performance similar to scope of work in this RFP; and • the degree to which examples demonstrate quality, creativity and originality in project planning, development, and implementation and return on investment | <p>30 points</p> |

| Criteria | Points Available |
|---|-------------------------|
| <p>Staff Qualifications</p> <p>Demonstrate relevant education, experience, knowledge, and skills of key staff.</p> <p>This criterion considers the education, experience, knowledge, and skills of the Offeror’s management staff, technicians, and other personnel assigned to the contract, including partner business staff and subcontractors.</p> <p>Evaluation standards for staff qualifications:</p> <ul style="list-style-type: none"> • project management staff resumes that reflect experience and expertise on work similar to scope of work in this RFP; • educational background of key personnel; and technical experience of all personnel responsible for planning, designing, manufacturing, or rehabilitating and installing exhibits. • Diversity of team’s education, experience, knowledge and skills. | <p>25 points</p> |
| <p>Business References</p> <p>Points will be awarded based upon an evaluation of the responses to a series of questions that will be asked of the <u>three</u> references concerning the quality of the Offeror’s services, the timeliness of services, responsiveness to problems and complaints, and the level of satisfaction with the Offerors overall performance (See Attachment 3, Reference Questionnaire).</p> | <p>10 points</p> |
| <p>Organization and Quality of RFP Response</p> <p>This criterion considers the quality of the Offeror’s response to this RFP. Evaluation criteria will include:</p> <ul style="list-style-type: none"> • Proposal organization and ease of understanding • Spelling • Completeness • Adherence to page limit | <p>5 points</p> |
| <p>Signed Letter of Transmittal</p> | <p>Pass/Fail</p> |
| <p>Response to Contract Terms and Conditions</p> | <p>Pass/Fail</p> |
| <p>Signed Campaign Contribution Form</p> | <p>Pass/Fail</p> |
| <p>Signed Statement of Assurances Form</p> | <p>Pass/Fail</p> |
| <p>Total points</p> | <p>100</p> |
| <p>Add either New Mexico or Native American Resident Preference, if applicable up to 8 points to total <u>or</u> add up to 10 points to total for New Mexico/Native American Resident Veteran preference. Only one bonus will be received.</p> | |

I. Evaluation Process

The evaluation process will follow the steps listed below:

1. The Evaluation Team 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 E and will select responsive Offeror(s) with the highest total scores as finalist Offeror(s). The Evaluation Team will consult with listed references and select the finalist Offeror(s) whose proposal and references is/are most advantageous to the department for award. Please note, however, that a deficiency in any one factor may be grounds for rejection regardless of overall score.

J. Contract Award and Duration

The department may award multiple contracts under the terms of the attached draft PSA (Attachment 4) and in accordance with this RFP. Any PSA awarded as a result of this RFP shall not be binding until approved by the State of New Mexico, General Services Department (GSD), Contracts Review Bureau. **The contract period shall extend from the date of contract approval by the Contracts Review Bureau, and shall last no longer than four years, including amendments.**

K. Contact Person

Any inquiries or requests regarding this procurement must be submitted in writing to the department 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 the department's behalf.

The Department contact person for this procurement is:

Name: Greg Geisler, Procurement Manager
Telephone: (505) 827-1222
Email: greg.geisler@dca.nm.gov

L. 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. **September 12**. 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.

An Electronic version of RFP, Questions & Answers, RFP Amendments, etc. can be found at www.nmculture.org/rfp

M. Proposal Due Date

Offerors shall submit all proposals electronically as a PDF document to Greg Geisler via e-mail or other electronic file sharing service at greg.geisler@dca.nm.gov on or before **October 2, 2023**, no later than 5 p.m. MST. Proposals must be submitted in the format specified above in Section D, Proposal Format and Contents. The Offeror is responsible for confirming receipt of the proposal with the Contact Person by the proposal due date. The Department 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.

N. Protest Period

Pursuant to NMSA 1978, Section 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 department. The protest period begins on the day after notice of selection/non-selection and ends at 5 p.m. 15 days later. Protests must be delivered to: Melissa Catanach, DCA ASD, 407 Galisteo Street, Suite 264, Santa Fe, NM, 87501.

O. Notices

1. Award of agreements is contingent upon sufficient appropriations and authorization being made by the State of New Mexico.
2. The money made available to support any PSA entered into as a result of this RFP must cover Gross Receipts Taxes as a component of the total PSA amount.
3. The Department may cancel this RFP and reject any and all proposals when it is in the State of New Mexico's best interests.
4. The Department may conduct discussions with Offerors who submit proposals, but may also accept proposals without such discussions.
5. 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

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

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

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

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

The following definitions apply:

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

"Campaign Contribution" means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to statewide or local office.

"Campaign Contribution" includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or

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

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

“Pendency of the procurement process” means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the 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 or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or a small purchase contract.

“Representative of a prospective contractor” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor. Note: A prospective contractor shall make **separate** disclosures of all campaign contributions given by (1) the prospective contractor, or (2) a family member or (3) representative of the prospective contractor, or shall complete the non-disclosure statement, as applicable.

DISCLOSURE OF CONTRIBUTIONS:

| | | | |
|--|------------------------------------|-----------------------------------|------------------------------------|
| Contribution Made By: | | | |
| Relation to Prospective Contractor: | | | |
| Name of Applicable Public Official: | | Governor _____ | |
| Contribution(s) Date(s) | Contribution Amount(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: _____

**Attachment 2
STATEMENT OF ASSURANCES FORM**

| | |
|---|----------------|
| Each Offeror MUST complete this form and return it with Offeror's proposal or department 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 New Mexico/Native American Resident Preferences: New Mexico preference laws do apply. | |
| _____ Offeror Signature | _____ Date: |
| Offeror's Printed Name and Title: _____ | |

Attachment 3

| REQUEST FOR PROPOSALS FOR EXHIBIT PLANNING, DESIGN, FABRICATION AND INSTALLATION SERVICES REFERENCE QUESTIONNAIRE | | | |
|--|-------------------------|---------------------------|-------------------------|
| Name of Individual/Entity Requesting Reference: | | | |
| <p>The department, as a part of the RFP process, requires Offerors to submit a minimum of three business references as required within this document. The purpose of these references is to document the experience relevant to the scope of work and provide assistance in the evaluation process.</p> <p>The Offeror is required to send this reference form to each business reference listed. The business reference, in turn, is requested to submit the Reference Form directly to the Contact Person listed below by the RFP submission deadline for inclusion in the evaluation process. The form and information provided will become a part of the submitted proposal. Please have each reference return this completed form directly to Greg Geisler via e-mail at greg.geisler@dca.nm.gov no later than 5 p.m., October 2, 2023. Do not return this form to the individual or entity requesting the reference.</p> <p>For questions or concerns regarding this form, please contact the Contact Person listed above.</p> | | | |
| Name of Individual/Entity Providing Reference: | | | |
| Contact Name and Title/Position: | | | |
| Contact Telephone Number: | | | |
| Contact E-Mail Address: | | | |
| QUESTIONS | | | |
| 1. In what capacity have you worked with this Offeror in the past? (Please explain) | | | |
| | | | |
| 2. How would you rate this Offeror's knowledge and expertise? (Check one) | | | |
| 3-Excellent _____ | 2-Satisfactory _____ | 1-Unsatisfactory _____ | 0-Unacceptable _____ |
| Comments: | | | |
| | | | |
| 3. How would you rate the Offeror's flexibility relative to changes in the project scope and timelines? (Check one) | | | |
| 3-Excellent _____ | 2-Satisfactory _____ | 1-Unsatisfactory _____ | 0-Unacceptable _____ |

**REQUEST FOR PROPOSALS
FOR EXHIBIT PLANNING, DESIGN, FABRICATION AND INSTALLATION SERVICES
REFERENCE QUESTIONNAIRE**

Comments:

4. What is your level of satisfaction with hard-copy materials produced by the Offeror? (Check one)

| | | | |
|----------------------|-------------------------|---------------------------|-------------------------|
| 3-Excellent _____ | 2-Satisfactory _____ | 1-Unsatisfactory _____ | 0-Unacceptable _____ |
|----------------------|-------------------------|---------------------------|-------------------------|

Comments:

5. How would you rate the dynamics/interaction between the Offeror and your staff and/or volunteers? (Check one)

| | | | |
|----------------------|-------------------------|----------------------------|-------------------------|
| 3-Excellent _____ | 2-Satisfactory _____ | 1- Unsatisfactory _____ | 0-Unacceptable _____ |
|----------------------|-------------------------|----------------------------|-------------------------|

Comments:

6. Who were the Offeror's principal representatives involved in your project and how would you rate them individually? Would you comment on the skills, knowledge, behaviors or other factors on which you based the rating? (3 – Excellent; 2 – Satisfactory; 1 – Unsatisfactory; 0 – Unacceptable)

| | |
|--------------------------------|---------------|
| Principal Representative Name: | Rating: _____ |
| Principal Representative Name: | Rating: _____ |
| Principal Representative Name: | Rating: _____ |
| Principal Representative Name: | Rating: _____ |

Comments:

7. How satisfied are you with the products developed by the Offeror? (Check one)

| | | | |
|----------------------|-------------------------|----------------------------|-------------------------|
| 3-Excellent _____ | 2-Satisfactory _____ | 1--Unsatisfactory _____ | 0-Unacceptable _____ |
|----------------------|-------------------------|----------------------------|-------------------------|

Comments:

8. With which aspect(s) of the Offeror's services are you most satisfied? (Please explain)

**REQUEST FOR PROPOSALS
FOR EXHIBIT PLANNING, DESIGN, FABRICATION AND INSTALLATION SERVICES
REFERENCE QUESTIONNAIRE**

9. With which aspect(s) of the Offeror's services are you least satisfied? (Please explain)

10. Would you recommend this Offeror's services to your organization again? (Please explain)

Attachment 4

STATE OF NEW MEXICO,
NEW MEXICO DEPARTMENT OF CULTURAL AFFAIRS
PROFESSIONAL SERVICES AGREEMENT (AGREEMENT)

THIS AGREEMENT is made and entered into by and between the State of New Mexico, New Mexico Department of Cultural Affairs (Agency) and (insert Contractor Name) (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:

(Complete Task Order to be inserted here.)

2. **Compensation.**

A. The Agency shall pay to the Contractor in full payment for services satisfactorily performed based upon the deliverables and budget as set forth in the Task Order, such compensation not to exceed (TOTAL AMOUNT), including New Mexico Gross Receipts Tax and travel, if any. **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.

3. **Term.**

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

4. **Termination.**

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

B. Notice; Agency Opportunity to Cure.

1. Except as otherwise provided in Paragraph (4)(B)(3), the Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Agency must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Paragraph 5, "Appropriations", of this Agreement.

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

D. Termination Management. Immediately upon receipt by either the Agency or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Agency; 2) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the Agency upon termination and shall be submitted to the agency as soon as practicable.

5. Appropriations.

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

6. Status of Contractor.

The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are

reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. Assignment.

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

8. Subcontracting.

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

9. Release.

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

10. Confidentiality.

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

11. Product of Service -- Copyright.

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

12. Conflict of Interest; Governmental Conduct Act.

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

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

1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Agency employee while such employee was or is employed by the Agency and participating directly or indirectly in the Agency's contracting process;

2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if

the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;

3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Agency's making this Agreement;

4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Agency.

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

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

13. Amendment.

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

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

14. Merger.

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

15. Penalties for violation of law.

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

16. Equal Opportunity Compliance.

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

17. Applicable Law.

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

18. Workers Compensation.

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

19. Records and Financial Audit.

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, the General Services Department/State Purchasing Division and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments

20. Indemnification.

The Contractor shall defend, indemnify and hold harmless the Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the

Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

21. New Mexico Employees Health Coverage.

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

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

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage.

22. Invalid Term or Condition.

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

23. Enforcement of Agreement.

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

24. Notices.

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

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

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

25. Authority.

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

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

By: _____ Date: _____
Agency

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

By: _____ Date: _____
Agency's 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 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