

**RISK MANAGEMENT DIVISION**  
**Of the**  
**GENERAL SERVICES DEPARTMENT**  
**REQUEST FOR PROPOSALS (RFP)**  
**LEGAL SERVICES**



**RFP#**  
24-350-4905-0003

Release date: November 1, 2023

Due date: November 17, 2023

# I. INTRODUCTION

## ***PURPOSE:***

The purpose of this Request for Proposal (RFP) is to solicit sealed proposals from attorneys who wish to provide professional legal services to Risk Management Division (RMD) of the General Services Department (GSD) to facilitate RMD's statutory duties to defend the State of New Mexico in matters that fall under the purview of the Risk Management Division of GSD.

The RFP process ensures that all Professional Services Agreements are Awarded in compliance with all relevant provisions of the New Mexico Procurement Code (13-1-28 *et seq.* NMSA 1978).

**WHO MAY SUBMIT:** Attorneys and law firms may submit proposals to provide legal services which support defense of:

### **(1) Public Liability Fund**

- Requires expertise in one or more of the following areas of law: general tort/public liability pursuant to the Tort Claims Act NMSA § 41-4-1 (*et seq.*); medical malpractice; law enforcement and corrections liability; employment and ethics laws; civil rights; insurance, subrogation and contractual indemnity; construction; property rights and usage; and class action litigation.

### **(2) Worker's Compensation Retention Fund**

- Requires expertise in the Workers Compensation Administration and appellate courts pursuant to NMSA § 52-1-1 (*et seq.*).

Offerors Awarded Contracts shall work closely with RMD staff on development of legal strategies to effectuate early evaluation of claims and practical strategies. Such strategies may facilitate early resolution through motion practice or use of alternative dispute resolution. Selected Offeror(s) shall be deemed "Contractor" or "Contract Counsel". During all litigation stages, Contract Counsel shall keep RMD Claims Administrators and RMD Supervising Attorneys timely informed about dates of settlement conferences, mediations and arbitrations, as well as hearing dates on all dispositive motions. RMD shall review all legal services invoices, and expense submissions to confirm compliance with contractual billing guidelines and other governmental finance requirements.

## ***SCOPE OF PROCUREMENT***

The scope of procurement is to select legal services providers who meet the requirements identified of this RFP. Successful Offeror(s) shall have contracts established with RMD. Such contracts will enable RMD to assign the most appropriate legal representation for legal matters related to its mission to defend the State.

## ***PROCUREMENT MANAGER***

1. GSD/RMD has assigned a Procurement Manager responsible for the conduct of this procurement; such individual's name, address and e-mail address are:

Gerardo Ruelas, Procurement Manager  
General Services Department/Risk Management Division  
1100 S Saint. Francis Drive, Ste. 2073 (**note proposal delivery address below**)  
Santa Fe, NM 87505-4147  
Email: Gerardo.Ruelas@GSD.nm.gov

2. **All deliveries must arrive via carrier and must be addressed as follows:**

Name: Gerardo Ruelas, Procurement Manager  
Reference RFP Name: Legal Services RFP # 24-350-4905-0003  
Address: General Services Department/Risk Management Division  
c/o Risk Management Division  
1100 S Saint Francis Drive, Ste. 2073  
Santa Fe, NM 87505-4147

3. Any inquiries or requests regarding this procurement should be submitted, in writing, to the Procurement Manager. *Offerors may contact **ONLY** the Procurement Manager regarding this procurement.* Other state employees or Evaluation Committee members do not have the authority to respond on behalf of the RMD.

## ***DEFINITION OF TERMINOLOGY***

“Agency” means the Risk Management Division of the General Services Department.

“Authorized Representative” or “Representative” 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 a Prospective Contractor.

“Award” or “Awarded” means the final execution of the Contract document.

“Contract” means any agreement for work done to support the Workers’ Compensation Bureau, with fees to be paid from the Workers’ Compensation Retention Fund, and/or a Contract for work to investigate and defend tort claims and other legal matters done in support of RMD, to be paid from the Public Liability Fund.

“Contractor” or “Contract Counsel” means any business having a Contract with the NM RMD.

“Determination” means the written documentation of a decision of a procurement officer including findings of fact required to support a decision. A Determination becomes part of the procurement file to which it pertains.

“Desirable” – the terms "may", "can", "should", "preferably", or "prefers" identify a desirable or discretionary item or factor.

“Evaluation Committee” means a body appointed to perform the evaluation of Offerors’ proposals.

“Evaluation Committee Report” means a report prepared by the Procurement Manager and the Evaluation Committee for Contract Award. It will contain written Determinations resulting from the procurement.

“Finalist” means an Offeror who meets all the Mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

“GSD” means the New Mexico State General Services Department.

“IT” means Information Technology.

“Mandatory” – the terms "must", "shall", "will", "is required", or "are required", identify a Mandatory item or factor. Failure to meet a Mandatory item or factor will result in the rejection of the Offeror’s proposal.

“Minor Irregularities” means anything in the proposal that does not affect the price quality and quantity or any other Mandatory requirement.

“Offeror” is any person, corporation, or partnership who chooses to submit a proposal.

“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.

“Procurement Manager” means any person or designee authorized by a state agency or local public body to enter into or administer contracts and make written Determinations with respect thereto.

“Procuring Agency” means the Risk Management Division of the General Services Department

“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.

“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.

“Request for Proposals (RFP)” means all documents, including those attached or incorporated by reference, used for soliciting proposals.

“Responsible Offeror” means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that its financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services, or items of tangible personal property described in the proposal.

“Responsive Offer” or means an offer which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to price, quality, quantity or delivery requirements.

“RMD” means Risk Management Division of the New Mexico State General Services Department.

“Staff” means any individual who is a full-time, part-time, or an independently contracted employee with the Offeror’s company.

“State (the State)” means the State of New Mexico.

“State Agency” means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of this state. “State Agency” includes the purchasing division of the general services department and the State Purchasing Agent but does not include local public bodies.

## **II. CONDITIONS GOVERNING THE PROCUREMENT**

This section of the RFP contains the schedule, description and conditions governing the procurement.

## ***SEQUENCE OF EVENTS***

The Procurement Manager will make every effort to adhere to the following schedule:

<b>Action</b>	<b>Responsible Party</b>	<b>Due Date(s)</b>
1. Issue RFP	RMD	November 1, 2023
2. Distribution List/ Acknowledgement of Receipt of Request for Proposals Form (Appendix A) Due	Potential Offerors	November 6, 2023
3. Deadline to submit Questions	Potential Offerors	November 10, 2023
4. Responses to Written Questions	RMD	November 13, 2023
<b>5. Submission of Proposal</b>	<b>Potential Offerors</b>	<b>November 17, 2023</b>
6. Proposal Evaluation	Evaluation Committee	November 20-22, 2023
7. Finalize Contractual Agreements	RMD	December 1, 2023
8. Contract Awards	RMD	December 15, 2023
9. Protest Deadline	RMD/Finalist Offerors	December 30, 2023

## ***EXPLANATION OF EVENTS***

The following paragraphs describe the activities listed in the Sequence of Events shown above.

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

This RFP is issued on behalf of GSD/RMD on Wednesday **November 1, 2023**

### **2. Distribution List Response Due**

Responsible Offerors who desire placement on a distribution list to receive written responses to questions posed and for other announcements regarding the procurement process should return by email the "Acknowledgement of Receipt of Request for Proposals Form" that accompanies this document, APPENDIX A. Return of Appendix A by the deadline identified places the organization on the procurement distribution list. The form must be signed by the Offeror or an Authorized Representative of the Offeror, dated and returned to the Procurement Manager VIA EMAIL no later than **10 AM MST or MDT on November 6, 2023**.

**NOTE:** Failure to return the Acknowledgement of Receipt form (Attachment A) shall constitute a presumption of receipt and rejection of the RFP, and the Offeror's organization name shall not appear on the distribution list.

### 3. Deadline to Submit Written Questions

Offerors may submit written questions to the Procurement Manager as to the intent or to clarify provisions in the RFP on November 10, 2023, until 12:00 PM Mountain Standard Time/Daylight Time as indicated in the Sequence of Events. All written questions must be addressed to the Procurement Manager as declared in Section I. Telephone calls will not be accepted. Only written questions submitted to the Procurement Manager via email will receive a response.

### 4. Response to Written Questions

Written responses to written questions will be distributed to all potential Offerors whose organization name appears on the procurement distribution list and who provided the Attachment A, Acknowledgement of Receipt Form before the deadline. An e-mail copy will be sent to all Offerors that provide Acknowledgement of Receipt Forms (Appendix A) before the deadline, as indicated in the sequence of events. Additional copies will be posted to:

<http://www.generalservices.state.nm.us/riskmanagement/Solicitations.aspx>

### 5. Submission of Proposal

ALL OFFEROR PROPOSALS MUST BE RECEIVED BY THE PROCUREMENT MANAGER NO LATER THAN 3:00 PM MOUNTAIN STANDARD TIME/DAYLIGHTTIME ON **Friday, November 17, 2023**. Proposals received after this deadline *will not be accepted*. The date and time of receipt will be recorded on each proposal.

Proposals must be addressed and delivered via carrier to the Procurement Manager at the address listed in Section I, Paragraph D2. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the RMD, Legal Services **RFP 24-350-4905-0003**. Proposals submitted by facsimile, or other electronic means, will not be accepted.

A public log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to Section 13-1-116 NMSA 1978, the contents of proposals shall not be disclosed to competing Offeror(s) during the negotiation process. The negotiation process is deemed to be in effect until the Contract Award is made pursuant to this Request for Proposals. Awarded, in this context, means the final required State Agency signature on the Contract(s) resulting from this procurement has been obtained.

### 6. Proposal Evaluation

An Agency Evaluation Committee will perform the evaluation of proposals during the time period identified in the Sequence of Events. During this time, the Procurement Manager may initiate discussions with Offerors who submit responsive or potentially

responsive proposals but *only* for the purpose of clarifying aspects of the proposals. However, proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors.

## 7. Finalize Contractual Agreements

Any contractual agreements resulting from this RFP will be finalized with the most advantageous Responsible Offerors as per the Sequence of Events or as soon thereafter as possible. This date is subject to change at the discretion of the Risk Management Division.

## 8. Contract Awards

After review of the Evaluation Committee Report and the signed contractual agreements, the Procuring Agency will identify successful awardees as per the schedule in Sequence of Events or as soon as possible thereafter. This date is subject to change at the discretion of the Risk Management Division.

The Contract shall be awarded to the Offeror (or Offerors) whose proposals are most advantageous to the State of New Mexico and the General Services Department/Risk Management Division taking into consideration the evaluation factors set forth in this RFP. The most advantageous proposal(s) may or may not have received the most points. The Award is subject to appropriate Department and State approval.

## 9. Protest Deadline

Any protest by an Offeror must be timely and in conformance with Section 13-1-172 NMSA 1978 and applicable procurement regulations. The **15-calendar** day protest period shall begin on the day following the Award of Contracts and will end at 5:00 pm Mountain Standard Time/Daylight Time on, **December 30, 2023**. Protests must be written and must include the name and address of the protestor and the Request for Proposal number. It must also contain a statement of the grounds for protest including appropriate supporting exhibits and it must specify the ruling requested from the party listed below. The protest must be delivered to:

Director  
Risk Management Division  
P.O. Box 6850  
Santa Fe, NM 87502

Protests received after the deadline will not be accepted.



## **GENERAL REQUIREMENTS**

### **1. Acceptance of Conditions Governing the Procurement**

Offerors must indicate their acceptance of the Conditions Governing the Procurement section in the letter of transmittal. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.

### **2. Costs Incurred by Offeror**

Any cost incurred by the potential Offeror in preparation, transmittal, and/or presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror. Any cost incurred by the Offeror for set up and demonstration of the proposed equipment and/or system shall be borne solely by the Offeror.

### **3. Contractor Responsibility**

Any contractual agreement that may result from this RFP shall specify that the Contractor is solely responsible for fulfillment of all requirements of the contractual agreement with RMD which may derive from this RFP. The RMD will only make payments to the prime Contractor who is awarded a Contract under this procurement.

### **4. Subcontractor/Consent**

The use of subcontractors is allowed. The Contractor shall be wholly responsible for the entire performance of the contractual agreement whether or not subcontractors are used. Additionally, the Contractor must receive approval, in writing, from the RMD, before any subcontractor is used during the term of this agreement.

### **5. Amended Proposals**

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

### **6. Offerors' Rights to Withdraw Proposal**

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

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

## 7. Proposal Offer Firm

Responses to this RFP, including acceptance of prescribed rates for services, will be considered firm for one hundred twenty (120) days after the due date for receipt of proposals.

## 8. Disclosure of Proposal Contents

- a. Proposals will be kept confidential until negotiations and the Award are completed by the Agency. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for material that is clearly marked proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the potential Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements:
- b. Proprietary or confidential data should be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.
- c. Confidential data is restricted to:
  - i. confidential financial information concerning the Offeror's organization.
  - ii. data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, Sections 57-3A-1 to 57-3A-7 NMSA 1978.
  - iii. PLEASE NOTE: The price of products offered, or the cost of services proposed **shall not be designated** as proprietary or confidential information.

If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, the Agency shall examine the Offeror's request and make a written Determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

## 9. No Obligation

This RFP in no manner obligates the State of New Mexico or any of its Agencies to the use of any Offeror's services prior to a valid written Contract Award.

## 10. Termination

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

## 11. Sufficient Appropriation

Any Contract Awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such terminations will be effected by

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

## **12. Legal Review**

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

## **13. Governing Law**

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

## **14. Basis for Proposal**

Only information supplied, in writing, by the Agency through the Procurement Manager or in this RFP should be used as the basis for the preparation of Offeror proposals.

## **15. Contract Terms and Conditions**

Two different Contracts may be Awarded, a Contract for work done to support the Workers' Compensation Bureau, with fees to be paid from the Workers' Compensation Retention Fund, and a Contract for work to investigate and defend tort claims and other legal matters done in support of RMD, to be paid from the Public Liability Fund. Contracts between the Agency and a Contractor will follow the format specified by the Agency and contain the terms and conditions set forth in the Contract template provided in Appendix C. However, the Agency reserves the right to negotiate provisions in addition to those contained in this RFP (Sample Contract) with any Offeror. The contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal will be incorporated into and become part of any resultant Contract.

The Agency will not accept deviations from the Contract terms and conditions as set forth in the RFP Contract template, unless submitted by Offeror and approved by the Agency. (Appendix C) Any proposed deviations may cause a proposal to be rejected as nonresponsive when, in the sole judgment of the Agency (and its evaluation team), the proposal appears to be conditioned on the deviation, or correction of what is deemed to be a deficiency, or an unacceptable deviation 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 Contract Template (APPENDIX C) the Offeror must propose **specific** alternative language. The Agency may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions of

the Sample Contract are not acceptable to the Agency and will result in disqualification of the Offeror's proposal.

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

## **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 Agency. As stated in more detail above, proposed deviations may or may not be accepted by the Agency.

## **17. Contract Deviations**

Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between the Agency 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 Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any Offeror who is not a Responsible Offeror or fails to submit a responsive offer as defined in Sections 13-1-83 and 13-1-85 NMSA 1978.

## **19. Right to Waive Minor Irregularities**

The Evaluation Committee reserves the right to waive Minor Irregularities. The Evaluation Committee also reserves the right to waive Mandatory requirements provided that all of the otherwise responsive proposals failed to meet the same Mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

## **20. Change in Contractor Representatives**

The Agency reserves the right to require a change in Contractor if the assigned Contractor is not, in the opinion of the Agency, adequately meeting the needs of the Agency.

## **21. Notice of Penalties**

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

## **22. Agency Rights**

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

## **23. Right to Publish**

Throughout the duration of this procurement process and Contract term, Offerors and Contractors must secure from the Agency written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or 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.

## **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 Agency.

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

## **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 Agency, the Offeror acknowledges that the version maintained by the Agency shall govern.

Please refer to:

<http://www.generalservices.state.nm.us/riskmanagement/Solicitations.aspx>

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

- a. If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the Contract, Offeror must agree to have in place, and agree to maintain for the term of the Contract, health insurance for those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
- b. The offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.
- c. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information <https://www.bewellnm.com/> .

## **29. Campaign Contribution Disclosure Form**

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

## **30. Disclosure Regarding Responsibility**

- a. Any Prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any State Agency or local public body for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company:
- b. is presently debarred, suspended, proposed for debarment, or declared ineligible for Award of contract by any federal entity, State Agency or local public body;

- c. has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:
  - i. 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;
  - ii. violation of Federal or state antitrust statutes related to the submission of offers; or
  - iii. 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;
- d. 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;
- e. 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.
  - i. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not 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.
  - ii. 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.
  - iii. 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.)
- f. 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.
- g. 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 be grounds for immediate termination of the Agreement.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of

business dealings.

- i. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an Award and is a continuing material representation of the facts during the term of the resulting 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 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.

### **31. Conflict of Interest; Governmental Conduct Act.**

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement without the written consent by the Director of RMD. Prior disclosure of conflicts of interest shall be a condition precedent, and failure to disclose shall be grounds for subsequent Contract termination. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee or former state employee have been followed.

Offerors must disclose any past, existing, or potential conflicts of interest in the course of representing governmental entities, educational institutions and public employees represented by RMD. This disclosure should include both direct and indirect conflicts of interest and also include any positions Offeror has taken in the recent past, or is presently taking, on issues that may be adverse or harmful to the interests of RMD or its insureds. To the extent required by the Rules of Professional Responsibility, the disclosure must include any previous litigation against the State of New Mexico or any of its political subdivisions in which Offeror or members of Offeror's firm have been involved in any capacity. If the RMD Director determines that an existing conflict of interest exists, the Offeror shall be required by the Procurement Manager to submit additional documentation limited to a specific description of how the Offeror proposes to overcome the conflict.

## **III. RESPONSE FORMAT AND ORGANIZATION**

### ***NUMBER OF RESPONSES***

Offerors shall submit only one proposal in response to this RFP. (To include the copies as stated below.)



## ***NUMBER OF COPIES***

Offerors shall provide:

- One (1) original hardcopy of their Proposal; all confidential information in the proposal shall be clearly identified and easily segregated from the rest of the proposal.
- One (1) electronic version/copy of the proposal on a USB drive or CD.
- All Confidential Information shall be clearly identified and segregated on the electronic version mirroring the hard copy submitted.

## ***PROPOSAL FORMAT***

All proposals must be submitted as follows:

Typewritten on standard 8 ½ x 11-inch paper (larger paper is permissible for charts, spreadsheets, etc.) and placed dividers delineating each section.

The electronic version of the Proposal shall be in MS Word format.

### **1. Proposal Content and Organization**

Direct reference to pre-prepared or promotional material (i.e. Firm Resumes) may be used. The proposal should be organized and indexed in the following format and contain, at a minimum, all listed items in the sequence indicated.

- a) Acknowledgement of Receipt Form – Appendix A
- b) Campaign Contribution Disclosure Form – Appendix B
- c) Offeror's Response and Proposed Additional Terms to Sample Contract Terms and Conditions – Appendix C
  - i. Per items 15, 16, and 17 of the General Requirements above.
- d) Signed Employee Health Coverage Form – Appendix D
- e) Signed Letter of Transmittal – Appendix E
  - i. Completed Substitute W-9
- f) Completed Appendix F
  - i. Completion of KEY PERSONNEL designation form
  - ii. Completion of proposed Exhibit A designating Authorized Billable Staff
  - iii. Attached CV's, Certificates or other narrative describing each biller's qualifications.
- g) Resident Veterans Certificate *if applicable* – Appendix G
- h) Resident Vendor Certificate *if applicable* – Appendix H
- i) Affidavit of Former Employment – Appendix I
  - i. Includes SAMPLE of Affidavit for review only. If applicable, the Agency will forward Affidavit(s) for execution at the time of Contract Award.

Within each section of the proposal, Offerors should address the items in the order in which they appear in this RFP. All forms provided in this RFP must be thoroughly completed and included in the appropriate section of the proposal.

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

## 2. Letter of Transmittal

The offer's proposal must be accompanied by the Letter of Transmittal Form located in APPENDIX E which must be completed and signed by an individual person authorized to obligate the firm.

## IV. SPECIFICATIONS

Offerors must respond by completing the form attached as Appendix F addressing each specification, unless otherwise instructed. The narratives, including required supporting materials will be evaluated for Pass/Fail accordingly.

**Failure to address and satisfy the qualifications below shall result in rejection of the proposal, or, in the instance of a later discovered conflict of interest, shall result in termination of a Contract Awarded by this RFP, if any.**

- a. Law firms submitting offers must have documented experience, skills and knowledge in representing municipal, county or state governmental entities in any of, but not limited to the following areas of law: general tort liability (including highway), medical malpractice, law enforcement and corrections liability, employment law, civil rights, insurance, subrogation and contractual indemnity, construction, property rights and usage, class action litigation and worker's compensation.
- b. Law firms submitting offers must identify Principals/Owners/Directors/Partners with at least five (5) years general civil litigation experience.
- d. The proposal must include both a completed hard copy and electronic copy of the form attached as Appendix F. Offerors shall complete Appendix F which includes a KEY PERSONNEL matrix that identifies attorneys with five years or more of relevant legal experience who the offering firm expects to supervise legal work assigned by RMD. Appendix F also includes a draft Exhibit A which should be attached to the Professional Services Contract, a form for Offerors to complete with a proposed list of each individual who may provide billable services (including Key Personnel, other billing attorneys, paralegals and law clerks).

Either *curriculum vitae* or narrative detail shall be attached to Appendix F which shall address the following for each proposed biller identified in the Exhibit A to the Professional Services Contract:

1. Area(s) of legal experience: for example, general tort liability (including highway), medical malpractice, law enforcement and corrections liability, employment

law, civil rights, insurance, subrogation and contractual indemnity, construction, property rights and usage, class action litigation, and worker's compensation, alleged ethical violations of state law. (Please do not provide extensive or uninformative case lists);

2. A summary of the attorney's general litigation experience;
3. A summary of the attorney's experience in federal and/or state administrative/regulatory proceedings;
4. Date proposed attorneys were licensed as attorney(s) in the State of New Mexico, and other bar admission dates; and
5. A summary of the attorney's educational background, special training, and recognitions.

RMD retains the right to request additional information demonstrating the requisite experience.

- e. Offeror must be insured as required pursuant to the terms set forth in the sample professional services agreements, attached hereto as Appendix C and incorporated herein by reference.
- f. Offerors must disclose any past, existing, or potential conflicts of interest while representing governmental entities, educational institutions and public employees represented by RMD. This disclosure should include both direct and indirect conflicts of interest and include any positions Offeror has taken in the recent past, or is presently taking, on issues that may be adverse or harmful to the interests of RMD or its insureds. The disclosure must include any previous litigation against the State of New Mexico or any of its political subdivisions in which Offeror or members of Offeror's firm have been involved in any capacity. If the RMD Director determines that an existing conflict of interest exists, the Offeror shall be required by the Procurement Manager to submit additional documentation limited to a specific description of how the Offeror proposes to overcome the conflict. Such additional documentation shall be submitted to the Procurement Manager **on or before 12:00 p.m., November 22, 2023**, before the end of the proposal evaluation process. If a Contract is awarded to an Offeror pursuant to this RFP, and RMD later discovers a conflict of interest that was not previously disclosed as required herein, the Contract may be terminated on or after the date of such discovery on the basis of failure to satisfy a condition precedent.
- g. Offerors must provide a short explanation of procedures routinely used that are designed to ensure that legal representation is provided in a cost-effective manner. RMD reserves the right to evaluate the cost-effectiveness of any Offeror that has had an RMD contract in the last four fiscal years. Offerors without such a contract will be evaluated based on narrative explanation of the firm's process for evaluation of new assignments,

innovative suggestions for minimizing costs and description of the firm’s capacity to meet the terms of the Billing Guidelines attached to the Sample Contract in Appendix C.

- h. Offerors must agree in the letter of transmittal (Appendix E) that it accepts the following schedule of hourly billing for services rendered. Note that there are distinct rate schedules for Contracts Awarded to defend the Public Liability Fund and Workers Compensation Retention Fund.

- (1) The following rates for standard litigation/assist/consultation assignments apply to Contracts Awarded to consult and defend the Public Liability Fund:

Attorneys – Standard Litigation/Assist/Consult Assignments

<b>Years Experience Practicing Law (from date of licensure)</b>	<b>Corresponding Hourly Rate</b>
0 to 1.99 years	\$150.00
2 to 4.99 years	\$175.00
5 to 9.99 years	\$200.00
10+ years	\$225.00

Paralegals – Standard Litigation/Assist/Consult Assignments

<b>Qualifications Certifications</b>	<b>Corresponding Hourly Rate</b>
Meet the requirements of Supreme Court Rule 20-102 and are active members of the Paralegal Division of the New Mexico State Bar Association or  Certification of having passed the National Legal Assistant’s Certifying Exam administered by the National Association of Legal Assistants	\$80.00

Law Clerks – Standard Litigation/Assist/Consult Assignments

<b>Qualifications Certifications</b>	<b>Corresponding Hourly Rate</b>
Law Clerks who are in an ABA accredited law school	\$60.00
Law Clerks with Juris Doctorates pending admission to the State Bar of New Mexico.	\$80.00

- (2) RMD may request that law firms Awarded Contracts to defend the Public Liability Fund accept assignments to pursue subrogation interests on claims impacting the Public Liability Fund. Firms that agree to accept subrogation assignments shall submit monthly progress invoices pursuant to the specialized hourly rate schedule below.

After RMD agrees to resolve a subrogation matter, *and* collects a recovery, the Contractor shall be paid an additional amount, equal to twenty percent (20%) of the net recovery. (Recovery is defined as gross recovery, net of fees and costs paid by RMD.)

Specialized Hourly Rate – Subrogation Assignments

<b>Law Firm Staff</b>	<b>Corresponding Hourly Rate</b>
Paralegals and Law Clerks	\$25.00
Attorneys 0 to 4.99 years	\$45.00
Attorneys 5 to 9.99 years	\$55.00
10+ years	\$65.00

- (3) The following rates apply to Contracts Awarded to defend the Worker’s Compensation Retention Fund in matters before the Workers Compensation Administration and appellate courts:

Attorneys.

<b>Years Experience Practicing Law (from date of licensure)</b>	<b>Corresponding Hourly Rate</b>
0 to 1.99 years	\$150.00
2 to 4.99 years	\$175.00
5 to 9.99 years	\$200.00
10+ years	\$225.00

Paralegals.

<b>Qualifications Certifications</b>	<b>Corresponding Hourly Rate</b>
Meet the requirements of Supreme Court Rule 20-102 and are active members of the Paralegal Division of the New Mexico State Bar Association or Certification of having passed the National Legal Assistant’s Certifying Exam administered by the National Association of Legal Assistants	\$80.00

Law Clerks

<b>Qualifications Certifications</b>	<b>Corresponding Hourly Rate</b>
Law Clerks who are in an ABA accredited law school	\$60.00
Law Clerks with Juris Doctorates pending admission to the State Bar of New Mexico.	\$80.00

- i. Offerors must provisionally complete and submit the Agency Certification form attached at Appendix I. Completion of the Agency Certification form requires Offeror to analyze its business association and determine whether any individual who has a substantial ownership interest (defined as greater than 20%) is required to disclose status as a current or former state employee or legislator or the family member of a current state employee or legislator. Any individual required to disclose status as current or former state employee or legislator, or the family member of a current state employee or legislator must be prepared to submit an affidavit at the time the Contract is executed. A sample affidavit is included in Appendix I and a final form will be submitted for execution at the time of Contract Award. Timely completion and return of the Affidavit will be critical in order to allow for required Memos from the Attorney General and PERA.

**Failure to address and satisfy these SPECIFICATIONS shall result in rejection of the proposal.**

***BUSINESS SPECIFICATIONS***

**1. Resident Business or Resident Veterans Preference**

To ensure adequate consideration and application of 13-1-21 NMSA (as amended), Offerors must include a copy of their preference certificate in this section. In addition, for resident Veterans Preference, the attached certification Form (APPENDIX G) must accompany any Offer and any business wishing to receive the preference must complete and sign the form.

**2. Letter of Transmittal Form**

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

**3. Campaign Contribution Disclosure Form**

The Offeror must complete an unaltered Campaign Contribution Disclosure Form and submit a signed copy with the Offeror's proposal. This must be accomplished whether or not an applicable contribution has been made. (See APPENDIX B)

#### 4. Employee Health Coverage Form

The Offeror must agree with the terms as indicated in APPENDIX D. The unaltered form must be completed, signed by the person authorized to obligate the Offeror's firm and submitted with Offeror's proposal.

### V. EVALUATION

#### *EVALUATION SUMMARY*

The following is a summary of evaluation factors. These weighted factors will be used in the evaluation of individual potential Offeror proposals by sub-category.

<b>Factors</b>	<b>Pass/Fail</b>
A. Specifications	Pass/Fail
B. Business Specifications	
Resident Business or Resident Veteran's Preference	Pass/Fail
Letter Of Transmittal	Pass/Fail
Campaign Contribution Disclosure Form	Pass/Fail
Employee Health Coverage Form	Pass/Fail

#### *EVALUATION PROCESS*

1. All Offeror proposals will be reviewed for compliance with the requirements and specifications stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the Offeror for clarification of the response.
3. The Evaluation Committee may use other sources of information to perform the evaluation.
4. Offerors whose proposals are most advantageous to the State will be recommended for Award. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection.

## **APPENDIX A**

### **ACKNOWLEDGEMENT OF RECEIPT FORM**



# APPENDIX A

## REQUEST FOR PROPOSAL

Legal Services  
24-350-4905-0003

### ACKNOWLEDGEMENT OF RECEIPT FORM

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that s/he has received a complete copy, beginning with the title page and ending with APPENDIX I.

The acknowledgement of receipt should be signed and returned to the Procurement Manager **via email** no later than **4:00PM MST Monday, November 6, 2023**. Only potential Offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all written questions and the written responses to those questions as well as RFP amendments, if any are issued.

**Firm *does* / *does not*** (circle one)  
**intend to respond to this Request for Proposal.**

FIRM: \_\_\_\_\_

REPRESENTED BY: \_\_\_\_\_

TITLE: \_\_\_\_\_ PHONE NO.: \_\_\_\_\_

E-MAIL: \_\_\_\_\_ FAX NO.: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

This name and address will be used for all correspondence related to the Request for Proposal.

Gerardo Ruelas, Procurement Manager  
Legal Services, RFP # 24-350-4905-0003  
Risk Management Division  
E-mail: Gerardo.Ruelas@gsd.nm.gov

**APPENDIX B**

**CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

## CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, 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 Prospective Contractor signs the contract, if the aggregate total of contributions given by the Prospective Contractor or a family member or Representative of a Prospective Contractor to the Applicable 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) 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 [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:** \_\_\_\_\_  
**(Completed by State Agency or Local Public Body)**

**DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:**

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

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

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

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

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

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

(Attach extra pages if necessary)

\_\_\_\_\_  
Signature Date

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

**--OR--**

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

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Title (Position)

APPENDIX C

***PROFESSIONAL SERVICES CONTRACTS***

# STATE OF NEW MEXICO

## GENERAL SERVICES DEPARTMENT

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

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **GENERAL SERVICES DEPARTMENT/RISK MANAGEMENT DIVISION**, 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: The Contractor shall provide professionally competent legal representation of governmental entities and public employees on a case-by-case basis when such work is assigned to it by RMD and accepted by the Contractor:

[Alternate Language for Contract in defense of Public Liability Fund] including consultation in evaluation of and representation in any matters that may impact the Public Liability Fund, including but not limited to defense of litigation brought pursuant to the provisions of the New Mexico Tort Claims Act, Sections 41-4-1 to 41-4-29 NMSA 1978, Sections 1983 and 1988 of the Civil Rights Act, the New Mexico Human Rights Act, Section 28-1-1 to 28-1-15 NMSA 1978, the Fair Pay for Women Act, Sections 28-23-1 to 28-23-6 NMSA 1978, the Whistleblower Protection Act, Sections 10-16C-1 to 10-16C-6 NMSA 1978, the Inspection of Public Records Act, Sections 14-2-1 to 14-2-12 NMSA 1978, the Public Peace, Health, Safety, & Welfare, State Ethics Commission Act, Sections 10-16G-1 to 10-16G-16 NMSA 1978, the New Mexico Civil Rights Act, Sections 41-4A-1 to 41-4A-13 NMSA 1978 and as provided for in this Agreement, including all Exhibits.

[Alternate Language for Contract in defense of Workers Compensation Retention Fund] including consultation in evaluation of and representation in any matters that may impact the Workers’ Compensation Retention Fund, including but not limited to defense of litigation brought pursuant to the provisions of the New Mexico Workers’ Compensation Act, Sections 52-1-1 to 52-1-70 NMSA 1978, as provided for in this Agreement, including all Exhibits.

Assignments. This Agreement does not constitute a grant to the Contractor of any right to handle any specific matter or any specific number of matters. RMD may, in its sole discretion, assign or reassign matters as it deems expedient. Contractor shall not begin work on any matter prior to receiving an assignment. By signing this Agreement, RMD does not guarantee the Assignment of any matters, any payment under this Agreement, or fulfillment of a granted contract amount. Whenever the Contractor accepts assignment of a matter by RMD but later decides it is unable or unwilling to accept the case assignment, the Contractor shall promptly enter an appearance and protect the rights of RMD and the associated public entity until substitute counsel is assigned.

All work will be performed pursuant to the terms and conditions set forth in the Billing Guidelines attached to this Professional Services Agreement as Exhibit A.

Services will be performed and billed for at the offices of the Contractor in the State of New Mexico or at such other out of state locations as may be authorized by the Agency.

Pro Bono Requirement. To reduce future risk, each attorney listed in Contractor's Exhibit A shall, at the request of the Agency, provide four (4) hours of pro bono, to include both fees and costs, post-litigation root cause debriefing, training, or other legal advice or consultative services per case to the Agency, or to state agencies or others identified by the Agency.

Insurance Coverage. The Contractor shall procure and maintain in full force and effect during the terms of this Agreement. The Contractor shall furnish RMD copies of certificates of required insurance in a form satisfactory to RMD with submitted proposals.

i. Professional Liability Insurance. The Contractor shall procure and maintain during the term of this Agreement professional liability insurance in an amount of not less than \$1,000,000 per occurrence, including defense costs. Such insurance shall have no greater than a \$25,000 deductible unless a different form of security is specifically accepted in writing by RMD. The amount of any deductible shall be stated in writing.

ii. Comprehensive General Liability. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. Said policies of insurance shall include coverage for all operations performed for RMD by the Contractor.

iii. Possible Future Increase in Limit Amounts. If, during the term of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act, NMSA §§ 41-4-1 to 41-4-27, RMD may require the Contractor to increase the maximum limits of any insurance required herein.

## **2. Compensation.**

A. The Agency shall pay to the Contractor in full payment for services satisfactorily performed at rates prescribed in, and properly invoiced pursuant to the terms and conditions set forth in Exhibit A, 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. All invoices MUST BE received by the Agency no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

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

### **3. Term.**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE DFA. This Agreement shall terminate on, **December 31, 2027**, 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 the 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.

C. **Legal defense contracts; renewal.** As expressly permitted by NMSA §15-7-10 (A), but subject to the power of the Risk Management Advisory Board to approve a non-renewal of an existing contract according the procedures and provisions of NMSA §15-7-10 (B) and (C), any valid contract between the risk management division and any law firm, to defend claims against the state or any of its public employees pursuant to NMSA §41-4-4(B), shall be automatically extended for the purpose of and as long as necessary for completing and concluding any matter in litigation, including appeals, referred to the firm for defense prior to the termination date stated in the contract or any applicable amendment thereto. Automatic renewal pursuant to this section applies *only to* matters which were in litigation and were referred to the law firm prior to the contract termination date and does not apply to regular contract renewals. This term does not affect the director's discretion to assign or to terminate a prior assignment and reassign any matter to any law firm.

D. **Changes Within Contractor's Business Association.** Notwithstanding any agreements between or among Contractor's principles or employees, if the Contractor law firm advises RMD of its intention to wind down/dissolve or if *KEY PERSONNEL* (identified in Appendix F of Contractor's Offer) leave the firm, RMD may, at its sole discretion, elect to:

- a. Enter into a new contract with the departing *KEY PERSONNEL* allowing them to continue handling assigned cases and to continue representing RMD,
- b. Reassign cases to other attorneys in the firm, or
- c. Terminate the Contract and reassign cases to counsel of RMD's choosing.

**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 Department of Finance and Administration and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments.

**20. Indemnification.**

The Contractor shall defend, indemnify and hold harmless the Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractor 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 agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

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

**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:

Via Hand Delivery:

Risk Management Division Director  
NM Risk Management Division  
Joseph Montoya State Office Building  
1100 St. Francis Drive, Suite 2073  
Santa Fe, NM 87502

Via Mail:

Risk Management Division Director  
NM Risk Management Division  
PO Box 6850  
Santa Fe NM 87502-6850

To the Contractor:

[insert name, address and email].

**25. Authority.**

If Contractor is/are 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:**

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By: \_\_\_\_\_  
GSD Cabinet Secretary

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

By: \_\_\_\_\_  
GSD General Counsel

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

By: \_\_\_\_\_  
GSD Chief Financial Officer

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

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

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



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

ID Number: 00-000000-00-0

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

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

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

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

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

## Exhibit A

### Billing Guidelines

#### I. General Principles

- A. **Origination of Legal Work.** All legal work performed under the contract must originate with RMD. In the event any public entity or public employee makes direct contact with the Contractor to initiate defense of a matter, the Contractor shall immediately contact RMD for instructions. Public entities or public employees shall be directed to contact RMD to request a claim assignment according to normal RMD claim procedures. Legal work performed on behalf of a public entity in the absence of notice to or approval from RMD will not be compensated.
- B. **Conflicts of Interest** Since the State of New Mexico has a broad array of interests, Contractors shall be vigilant in application of the Rules of Professional Responsibility and have processes in place to identify actual, perceived, or potential conflicts of interest posed by its representation of the State, its entities and employees.

#### **Firms must comply with the following directives:**

A conflict-of-interest check must be performed by the Contractor on each matter assigned to it. RMD requires a prompt investigation and resolution of all potential conflicts, including any issue conflicts that could compromise the State's position. **A written email acknowledging the assignment and confirming that a conflict-of-interest check has been performed must be sent to RMD for every claim assigned to the Contractor, and must be completed before work on a claim begins**

Conflicts of interest must be disclosed to RMD immediately upon discovery of the conflict, and waived, in writing prior to beginning work on the matter.

The Contractor is further required to disclose any changes to the conflict-of-interest status during the pendency of representation and must inform RMD of any activity which might be actual, perceived, or a potential conflict of interest.

- C. **Ethical Improprieties.** Contractor shall immediately advise the RMD Director of any concerns about ethical improprieties on the part of RMD personnel, other state employees, or any individuals associated with a particular claim. Contractor must also self-report any potential ethical improprieties involving Contractor's personnel.

## **II. Communication**

- A. With rare exceptions, RMD requires e-mail communication due to its quick, efficient, and paperless nature. All e-mailed correspondence sent to RMD must display the RMD claim number in the subject line of the email.
- B. Assignments from RMD will appoint an RMD file handler as the Contractor's primary RMD contact for the matter. RMD may also designate additional RMD personnel to whom Contractor should communicate (or copy on communications). The file handler designated by RMD shall have the ultimate responsibility for the assigned matter and will be the person with whom Contract Counsel will have their primary working relationship in terms of litigation strategy, internal impressions, work product, and Contract oversight, approval of costs, settlement authority requests, and other day-to-day administrative issues which may arise.

## **III. Media Relations and Promotion**

- A. Any media inquiry relating to an assigned matter or RMD's relationship with the Contractor must be referred immediately to RMD. The Contractor shall not make statements to the media regarding RMD matters without securing advance approval from RMD through the General Services Department's Public Information Officer. If no approval can be obtained, Contractor shall issue a statement of no comment in response to any media inquiry.
- B. RMD does not authorize the Contractor to advertise or promote its relationship with RMD or the State of New Mexico, other than listing RMD as a client.

## **IV. Billing Requirements**

### **A. Hourly Billing Rates – General Requirements**

#### **1. Monthly Due Dates, End of Fiscal Year Billing**

- A. Contractor shall submit invoices to RMD for services rendered and expenses incurred in the prior calendar month.
- B. Contractor shall submit its initial bill or invoice on the first date above which follows finalization of its individual Contract.
- C. Late submissions of bills or invoices will result in delayed payments and may result in a reduction of future case assignments. Continued late submissions will be considered non-compliance with the terms of this contract and may result in termination of Contract.
- D. Invoices for services rendered or expenses incurred during the last month of a Fiscal Year as defined by the State of New Mexico are subject to DFA closing procedures.

Firms must follow all DFA and RMD guidance when submitting expenses subject to the DFA closing procedure.

- E. In compliance with the terms set forth in Exhibit A, Contractor must submit a detailed statement of invoice accounting for all services performed and expenses incurred.
  - 1. If the Agency finds that the services are not acceptable, it shall provide the Contractor with a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action.
  - 2. Upon certification by the Agency that the services have been received and accepted, payment shall be tendered to the Contractor.
  - 3. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked.
  - 4. Agency shall not incur late charges, interest, or penalties for failure to make payment within normal guidelines.

## 2. Designation of Key Personnel and Primary Contacts

- A. Per the terms of the Professional Services Agreement, authorized billers and applicable billing rates are set out in **Section B, Schedule of Rates**. Compensation and hourly billing rates for all personnel who work on a matter are subject to the schedule of rates defined in Exhibit A.
- B. Each authorized biller must be uploaded to the Firm Module in the Invoice Tracking Portal.
- C. Firms may amend the list of authorized billers by making changes to the Firm Module in the Invoice Tracking Portal.
- D. When adding new personnel to the Firm Module, firms must provide a resume and/or documentation of a certification for each individual the firm is proposing to add.

## 3. One-Tenth Hour Increments

- A. Time records shall represent the actual time required to perform the task or activity listed. Records shall be kept in time increments of 0.10 (one-tenth) of an hour.

## 4. Overhead and Administrative Costs

- A. Hourly billing rates include all items of overhead. Overhead includes all administrative or general costs incidental to the operation of the firm.
- B. Overhead expenses are not separately reimbursable. Overhead includes but is not limited to the following administrative tasks:
  - 1. Time spent on electronic filing of pleadings, routine copying, faxing, filing or retrieving from files, organization or indexing of pleadings, correspondence or other documents you prepare or receive.
  - 2. Time spent on initial review, listing or copying of incoming mail to determine appropriate routing, filing, etc.
  - 3. Time spent on scheduling appointments, depositions, or meetings, including travel or court reporter arrangements.
  - 4. Preparation and review of monthly billing statements.
  - 5. More than two hours responding to RMD-ordered auditor inquiries on any

individual matter.

6. Time associated with compliance to these practices and procedures or to any legal audit, either internal or external, of bills and expenses.
7. Maintenance of a calendar or tickler system.
8. The review of third party billing statements.
9. Time associated with investigating conflicts.
10. Clerical time related to reviewing, opening or closing files.
11. Other similar tasks.

**B. Schedule of Rates**

The following rates for standard litigation/assist/consultation assignments apply to Contracts Awarded to consult and defend the Public Liability Fund:

Attorneys – Standard Litigation/Assist/Consult Assignments

<b>Years of Experience Practicing Law (from date of licensure)</b>	<b>Corresponding Hourly Rate</b>
0 to 1.99 years	\$150.00
2 to 4.99 years	\$175.00
5 to 9.99 years	\$200.00
10+ years	\$225.00

Paralegals – Standard Litigation/Assist/Consult Assignments

<b>Qualifications Certifications</b>	<b>Corresponding Hourly Rate</b>
Meet the requirements of Supreme Court Rule 20-102 and are active members of the Paralegal Division of the New Mexico State Bar Association or  Certification of having passed the National Legal Assistant’s Certifying Exam administered by the National Association of Legal Assistants	\$80.00

Law Clerks – Standard Litigation/Assist/Consult Assignments

<b>Qualifications Certifications</b>	<b>Corresponding Hourly Rate</b>
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Law Clerks who are in an ABA accredited law school	\$60.00
Law Clerks with Juris Doctorates pending admission to the State Bar of New Mexico.	\$80.00

RMD may request that law firms Awarded Contracts to defend the Public Liability Fund accept assignments to pursue subrogation interests on claims impacting the Public Liability Fund. Firms that agree to accept subrogation assignments shall submit monthly progress invoices pursuant to the specialized hourly rate schedule below. After RMD agrees to resolve a subrogation matter, *and* collects a recovery, the Contractor shall be paid an additional amount, equal to twenty percent (20%) of the net recovery. (Recovery is defined as gross recovery, net of fees and costs paid by RMD.)

Specialized Hourly Rate – Subrogation Assignments

<b>Law Firm Staff</b>	<b>Corresponding Hourly Rate</b>
Paralegals and Law Clerks	\$25.00
Attorneys 0 to 4.99 years	\$45.00
Attorneys 5 to 9.99 years	\$55.00
10+ years	\$65.00

The following rates apply to Contracts Awarded to defend the Worker’s Compensation Retention Fund in matters before the Workers Compensation Administration and appellate courts:

Attorneys.

<b>Years of Experience Practicing Law (from date of licensure)</b>	<b>Corresponding Hourly Rate</b>
0 to 1.99 years	\$150.00
2 to 4.99 years	\$175.00
5 to 9.99 years	\$200.00
10+ years	\$225.00

Paralegals.

<b>Qualifications Certifications</b>	<b>Corresponding Hourly Rate</b>
Meet the requirements of Supreme Court Rule 20-102 and are active members of the Paralegal Division of the New Mexico State Bar Association or  Certification of having passed the National Legal Assistant's Certifying Exam administered by the National Association of Legal Assistants	\$80.00

Law Clerks

<b>Qualifications Certifications</b>	<b>Corresponding Hourly Rate</b>
Law Clerks who are in an ABA accredited law school	\$60.00
Law Clerks with Juris Doctorates pending admission to the State Bar of New Mexico.	\$80.00

**C. Billing Limitations**

1. Eight Hour Per Day Maximum

- A. Unless previously approved by RMD, no Contractor is authorized to bill more than eight (8) hours per matter per day.

2. In-Firm Conferences

- A. Unless attended in person or telephonically by the RMD contact, RMD will not pay for intra-office conferences.

3. One Attorney Per Meeting

- A. RMD requires that only one attorney attend meetings, conferences, depositions, hearings, trials, and other events.
- B. Unless pre-approved by the RMD file handler in writing, RMD will not pay for the attendance of more than one attorney at any event.

4. Non-Billable Ancillary Activities

- A. Unnecessary or unapproved depositions, preparation of summaries or abstracts, or trial preparation (considering the imminence of trial, case complexity, and probability of trial).
- B. Time spent researching issues common to civil practice in New Mexico.
- C. Unauthorized or "We thought you would like to know" communications which are not specific to assigned litigation.
- D. Marketing or promotional activities.
- E. Charges once a matter is closed or terminated.

## ALTERNATE LANGUAGE FOR WORKERS' COMPENSATION CONTRACTS ONLY

### 5. Workers' Compensation Fee Limitations

- A. Billings for fees and expenses on workers' compensation assignments are subject to all applicable limits set forth in the Workers' Compensation Act, associated rules, and as otherwise provided by law.

## D. Billing Format

### 1. Invoices

- A. Firms must invoice fees and expenses separately. RMD will reject invoices that include both fees and expenses. The following circumstances may result in delayed payment or cause RMD to deny payment on an invoice:
  - 1. Failure to manage billing on assignments and incurring fees in excess of Contract balance;
  - 2. Failure to include the RMD claim number on an invoice;
  - 3. Failure to timely submit a litigation risk analysis, quarterly status update, or root cause analysis;
  - 4. Failure to submit status reports as requested by RMD; or
  - 5. Failure to act in accordance with RMD directives.
- B. Bills must be submitted in an electronic format as determined by RMD and may include the most appropriate/accurate code from the Uniform Task-Based Management System developed by the American Bar Association and the American Corporate Counsel Association.

### 2. Description of Services Rendered and Expenses Incurred

- A. All bills must include a chronological listing of services showing at least the RMD case number, the date of services, a description of tasks, the authorized biller(s) who completed the task, the number of hours expended by each authorized biller, and the rate at which those hours were billed.
- B. All bills must include a description of each task completed in sufficient manner that RMD can ascertain the benefit derived from each service. Specific rules for sufficient descriptions include:
  - 1. Time entries for conferences and telephone calls shall identify the participants and the substance of the communication. For example: "Conference with F.T.E. Jones to prepare for her deposition on 5/19/94." – 2.3 hours.
  - 2. Time entries for drafting documents shall identify the document by title, subject matter and, where necessary, identify the document by date. For example: "Draft answers to plaintiff's interrogatories of 4/15/94." -3.10 hours.
  - 3. Time entries for review of documents shall identify the author, title, matter and when necessary, the date. For example: "Receipt and review of plaintiffs' reply to RMD's motion to compel production of documents of 4/30/94."- 0.60 hours
- C. RMD will not pay invoices that include blocked or lumped billing entries, except where minimal time is spent on a related activity. Blocked or lumped billing is a billing entry that assigns one amount of time to more than one task. Examples of prohibited blocked or lumped billing entries include:



1. "Prepare for and attend deposition of Professor Smith." – 4.50 hours.
  2. "Receipt and review of plaintiffs reply to defendant's motion to compel production of documents of 4/30/94; Conference with F.T.E. Jones to prepare for her deposition on 5/19/94; Draft answers to plaintiffs' interrogatories of 4/15/94." - 6.00 hours.
- D. Generic descriptions acceptable for billing purposes include:
1. Attention to matter,
  2. Review case and issues,
  3. Conference,
  4. Review Correspondence,
  5. Arrangements,
  6. Telephone Call,
  7. Discovery,
  8. Motion work,
  9. Work on Project or case,
  10. Pleading,
  11. Work on file,
  12. Prepare for meeting,
  13. Work on Discovery, or
  14. Receive/review documents.

## **E. Reimbursable Expenses**

1. Reimbursement for allowable expenses shall be invoiced separately from fees. At Contractor's discretion, expense invoices may be submitted twice a month. Copies of documentation for all expenses must accompany every bill or invoice submitted for reimbursement. Failure to submit proper documentation may result in a reduction in a firm's payment due to unsubstantiated expenses.

### 2. Travel Expenses and Mileage

- A. With prior authorization from the assigned File Handler, Personnel traveling on RMD business may submit reimbursement for reasonable travel expenses.
- B. RMD has sole discretion to determine if travel expenses are reasonable.
- C. Unreasonable or excessive travel costs will not be paid.
- D. RMD will reimburse actual costs in gas or a mileage reimbursement, but not both.
- E. Mileage shall be reimbursed at **80%** of the internal revenue service standard mileage rate set January 1 of the previous year for each mile traveled in a privately owned vehicle.
- F. Firms must bill travel expenses and mileage separately from fees and must be submitted to RMD within the fee schedule listed above. Out of State and overnight travel requires prior written approval from RMD. The request should be e-mailed to the assigned file handler, as early as possible, and detail at least:
  1. The reason for the requested travel,
  2. Efforts to appear via teleconference/video conference/other electronic means,
  3. The proposed travel location,
  4. Estimates of travel time and fees, and

5. Estimates of travel expenses.
3. Each expense item should be separately itemized, showing the date the expense was incurred, a descriptive explanation of the charge, the amount of the charge, and the timekeeper incurring the charge.
4. Reasonable, reimbursable expenses will be compensated at actual cost. Actual cost is defined as the amount paid, net of any discounts, to a third-party provider of goods or services.
5. Unless otherwise agreed, RMD requires that appropriate documentation be retained to substantiate all expenses. For outside vendor expenses, appropriate documentation consists of actual vendor receipts rather than charge account receipts (except for restaurant charges).
6. Prior to the retention of all experts or consultants, Contractor must obtain RMD approval and provide RMD with the proposed scope of work, fee information and estimated expenses.
7. Charges for overnight delivery and messenger services should not be routine and, if utilized, must be authorized by your RMD contact in writing.
8. Extraordinary Expenses - RMD must pre-approve extraordinary expenses such as computerized litigation support services, videotaping depositions, etc.

## **F. Non-Reimbursable Expenses**

### 1. General Non-Reimbursable Expenses.

- A. Items of expense considered overhead are part of the professional's hourly or alternative rate and are not reimbursable.
- B. Such expenses include, but are not limited to office rent, conference rooms, equipment rental, computer software, computerized research (including, but not limited to, computer legal research and investigation database access time, downloading or copying fees), printing and photocopying for internal office use, office supplies, word processing and secretarial time and overtime, utilities, local transportation, telephone, facsimile transmissions, facsimile receipt, books, in-town meals, routine postage, overnight messenger service fees, and overtime meals.
- C. RMD reserves the right to reject statements, billings, and/or invoices for non-reimbursable expenses.
- D. Surcharged rates by paralegals or other personnel shall not be reimbursed.

### 2. Waivable Filing Fees

- A. RMD expects firms to apply for fee waivers whenever possible, always in New Mexico District Court, through the process proscribed by the Court(s).
- B. RMD will not compensate waivable filing fees.

## **V. Staffing**

### **A. Attorneys**

1. When RMD makes an assignment to a Contractor, it will include in its assignment email the degree to which a certain matter is delegable within the Contractor's firm. Matters which

are not delegable are to be handled exclusively by the assignee, and RMD will not compensate work completed by other members of the Contractor's firm in the absence of expressly granted delegatory authority.

2. For matters which are delegable in either a limited or complete capacity, RMD requires that the lawyer originally assigned by RMD have ultimate responsibility for decisions relating to each matter, regardless of authority therein delegated. The lawyer assigned by RMD shall identify to RMD, any other lawyers working on the case pursuant to its delegatory authority and explain the role of each. The number of additional lawyers shall depend on the number and complexity of the issues related to each matter. The lawyer assigned by RMD is ultimately responsible for what work is being done, who is doing the work, and tracking time spent on the work. The lawyer assigned by RMD must also ensure that all work is useful and efficiently performed and is expected to review and be able to explain all billing related to each matter.
3. The level of expertise of the attorney shall be commensurate with the complexity of each task. For delegable matters, partners should not bill for tasks that can be performed by associates at a lower cost. Similarly, associates should not bill for tasks that can be more economically accomplished by paralegals.

#### **B. Paralegals**

1. The appropriate use of paralegals is encouraged; however, payment for paralegal time is limited to those activities requiring their special expertise and does not extend to clerical tasks, unless approved in advance.

#### **C. Other Personnel**

1. RMD will not pay for the services of librarians, file clerks, data entry clerks, secretaries, word processors, computer personnel, or messengers.

#### **D. Familiarization**

1. RMD will not pay for time spent familiarizing a new lawyer with the case if occasioned by a staffing change within the law firm.
2. RMD will not pay for substituted personnel or reeducation costs due to law firm attrition.

#### **E. Discontinuation of Representation**

##### 1. Changes in Personnel

- A. Whenever personnel assigned to a matter leave the firm, the firm shall notify RMD immediately.
- B. Upon notification, RMD shall determine whether to make changes in assignments.
- C. Notwithstanding any agreements among or between the Contractor's principles or employees, RMD reserves the right to amend the Contract as appropriate to maintain assigned cases with personnel who depart the firm.
- D. Notwithstanding any agreements among or between Contractor's principles or employees, RMD also reserves the right to maintain any assigned case with the contracted firm in the event of personnel changes. No attorney or other professional

should assume that any RMD matter would move to their new law firm.

2. Elective Discontinuation by RMD

- A. RMD reserves the right to discontinue any retention at any time without cause.
- B. RMD's sole obligation under either circumstance will be to reimburse the firm, in accordance with these billing practices and procedures, for work previously completed and costs actually incurred.
- C. The firm must cooperate and assist in the transition of any assigned matter including the forwarding of files and other materials.

**VI. Activities and Conduct of Assignments**

**A. Initial Risk Analysis**

- 1. Contractor will submit an initial risk analysis (IRA) in a format determined by RMD (located in Appendix I) within thirty (60) days of assignment. RMD reserves the right to amend the format of Appendix I.
- 2. This analysis is meant to detail the key components of exposure, an analysis of comparative fault among all implicated actors, and an estimation of any potential judgement.
- 3. The IRA is for internal RMD use only and shall not be disclosed to any other person or entity, including real parties in interest, without prior express authority by RMD.
- 4. Billing shall be limited to no more than six (6) hours per assigned case of professional time to prepare an IRA.

**B. Quarterly Status Reports**

- 1. Contractors shall submit quarterly status reports (QSRs) in a format determined by RMD (located in Appendix J) at ninety-day intervals from completion of the IRA. Upon acceptance of a case assignment, the RMD paralegal will issue a letter of engagement which includes the QSR schedule for the next two calendar years. RMD reserves the right to amend the format of Appendix J.
- 2. Contract Counsel is responsible for apprising RMD of changing procedural, factual, and/or other circumstances.

**C. Litigation Risk Analysis**

- 1. Contractor will submit a litigation risk analysis (LRA) in a format determined by RMD (located in Appendix K) at least thirty (30) days before a mediation and/or trial date, or upon request of RMD. Failure to provide the LRA in this timeframe may require cancellation and/or rescheduling of the mediation. RMD reserves the right to amend the format of Appendix K.
- 2. This analysis is meant to detail the key components of exposure, an analysis of comparative fault among all implicated actors, an estimate of any potential damages award, and a recommended settlement amount.
- 3. The LRA is for internal RMD use only and shall not be disclosed to any other person or

entity, including real parties in interest, without prior, express authority by RMD.

4. Billing shall be limited to no more than eight (8) hours per assigned case of professional time to prepare an LRA.

#### **D. Consultants and Experts**

1. Prior to the retention of all experts or consultants, Contractor must obtain RMD approval and provide RMD with the proposed scope of work, fee information, and estimated expenses.
2. The assigned attorney must monitor the expert/consultant's work and billing and immediately advise RMD of any changes to the pre-approved estimated expenses.

#### **E. Discovery**

1. Upon receipt of discovery requests, counsel must immediately forward the requests to the named party/representative and develop a plan with the named party/representative to gather substantive responses and materials.
2. No documents should be produced without a thorough review by counsel and without consideration being given to the preparation of privilege logs, a protective order, or stipulation, if appropriate.

#### **F. Pleadings and Formal Submissions**

1. For purposes of dispositive motions practice, counsel should confer with RMD about access to pleadings available from RMD's brief bank, which may be used by Contractor to amend for briefing purposes.
2. If a previously drafted pleading or standard form is available, RMD will pay only for time necessary to modify it for use in any new matter, not the time originally incurred to draft the standard document.

#### **G. Legal Research**

1. RMD approval is required prior to undertaking any major research (requiring more than three hours of professional time) on any matter. Please consult with your RMD contact to obtain any available source material on the topic. RMD will not reimburse fees for research database access or printing.
2. RMD requires that the attorneys selected for the representation team possess the requisite knowledge of the general legal concepts associated with the issues existing in the matter. Research shall be related to specific issues and shall not be of a general or background nature. Copies of all research memoranda shall be forwarded to RMD for future reference.
3. In some instances, RMD may decide that it is cost-effective to have legal research handled through an outsourced group, which provides legal research from experts in a given specialty. Contractor is expected to work with such firms and their personnel to serve the best interests of RMD.

## **H. Early Resolution Evaluations and Alternative Dispute Resolution**

- 1.RMD strongly encourages early settlements whenever practical and expects timely and meaningful settlement evaluations to be included as part of the required Initial Risk Analysis and Litigation Risk Analysis.
- 2.RMD expects an early settlement or other expedited, dispositive resolution wherever possible while protecting the State of New Mexico's interests.
- 3.RMD encourages proposals for alternative dispute resolution.

## **I. Settlement Negotiations and Conclusion**

- 1.In any dispute that involves medical expenses, Contractor shall make an early evaluation of any liens, and specifically advise of RMD's exposure under the Medicare Secondary Payer statute.
- 2.Once the issue is identified, RMD can provide compliance support by specialty counsel.
- 3.No settlement involving medical expenses paid by Medicare shall be negotiated or concluded without the required resolution per the Medicare Secondary Payer statute.

## **J. Root Cause Analysis**

1. Upon request, to reduce future risk, a root cause analysis (RCA) must be prepared and submitted via email to RMD within 10 days of the filing of a final order of dismissal.
2. Contractor may also be required to meet with the Executive head of the Agency and/or the general/chief counsel of the public entity to discuss the RCA at the request of RMD.
3. The form for a RCA will be found in Appendix L. RMD reserves the right to amend the format of Appendix L.

## **VII. Retention of Work Product and Financial Records**

- A. Firms must retain all work product substantiating Contract Counsel's billed tasks, including research notes, memoranda, and pleadings. Upon special request, firms must transmit all time sheets, billing memoranda, and other related documentation associated with any billing statement to RMD within five (5) business days.

**APPENDIX D**

***NEW MEXICO EMPLOYEES' HEALTH COVERAGE FORM***

## ***New Mexico Employees Health Coverage Form***

1. For all Contracts solicited and awarded on or after January 1, 2008: If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the Contract, Offeror must agree to have in place, and agree to maintain for the term of the Contract, health insurance for those employees and offer that health insurance to those employees no later than July 1<sup>st</sup> of each year if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
  
2. Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.
  
3. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information <https://www.bewellnm.com/> .

Signature of Offeror: \_\_\_\_\_

Date \_\_\_\_\_



## **APPENDIX E**

### ***LETTER OF TRANSMITTAL FORM***

## *Letter of Transmittal Form*

**RFP#: 24-350-4905-0003**

This form **MUST BE COMPLETED IN FULL** and signed/initialed by an authorized Principal of the Offeror Law Firm. Submission of an incomplete form **WILL RESULT IN THE DISQUALIFICATION OF THE PROPOSAL.**

**Offeror Name:** \_\_\_\_\_ **(must match detail in Substitute W-9)**

\_\_\_\_\_ Offeror has Principals/Owners/Directors/Partners with at least five (5) years general civil litigation experience.

\_\_\_\_\_ Completed Substitute W-9 Attached  
**NOTE: Preference will be given to vendors who agree to accept payment via ACH (automatic deposit).**

\_\_\_\_\_ Offeror is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

**XX-XXXXXX-XXX** NM Taxation and Revenue ID (CRS) Number

Offeror proposes to provide legal services and seeks to secure Contracts which support defense of:

\_\_\_\_\_ The Public Liability Fund:  
Requiring expertise in one or more of the following areas of law: general tort/public liability per the Tort Claims Act NMSA § 41-4-1 (*et.seq.*); medical malpractice; law enforcement and corrections liability; employment law; civil rights; insurance, subrogation and contractual indemnity; construction; property rights and usage; and class action litigation;

\_\_\_\_\_ The Worker's Compensation Retention Fund:  
Requiring expertise in matters before the Workers Compensation Administration and appellate courts.

Acceptance (Initial):

\_\_\_\_\_ On behalf of the submitting organization named in item #1, above, I accept the Conditions Governing the Procurement as required in Section II of the RPF.

\_\_\_\_\_ On behalf of the submitting organization named in item #1, above, I accept the prescribed schedule of billing rates set forth in Section IV(h) of the RPF.

Information for the person(s) authorized by the organization to negotiate terms and contractually obligate this Offeror.

Name \_\_\_\_\_

Title \_\_\_\_\_

E-Mail Address \_\_\_\_\_

Telephone Number \_\_\_\_\_

Information for the person authorized by the organization to clarify/respond to queries regarding this Offer:

Name \_\_\_\_\_  
Title \_\_\_\_\_  
E-Mail Address \_\_\_\_\_  
Telephone Number \_\_\_\_\_

Information for the person designated by the organization to receive notices associated with any Contract awarded via this procurement:

Name \_\_\_\_\_  
Title \_\_\_\_\_  
E-Mail Address \_\_\_\_\_  
Telephone Number \_\_\_\_\_

Information regarding use of subcontractor (Select one)

No subcontractor will be used in the performance of any resultant Contract OR  
 The following subcontractor will be used in the performance of any resultant Contract:

\_\_\_\_\_  
(Attach extra sheets, as needed)

Please describe any relationship with any entity (other than Subcontractor listed in (5) above) which will be used in the performance of any resultant Contract.

\_\_\_\_\_  
(Attach extra sheets, as needed)

\_\_\_\_\_, 2023  
Authorized Signature and Date

Attached is the link for the W-9 Form:

[https://www.nmdfa.state.nm.us/financial-control/resource-information/forms/ NM SUBSTITUTE w-9](https://www.nmdfa.state.nm.us/financial-control/resource-information/forms/NM%20SUBSTITUTE%20w-9)

***APPENDIX F***  
***RESIDENT VETERANS CERTIFICATION***

# Resident Veterans Preference Certification

\_\_\_\_\_ (NAME OF CONTRACTOR) hereby certifies the following in regard to application of the resident veterans' preference to this procurement:

**Please check one box only**

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than \$1M allowing me the 10% preference on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$1M but less than \$5M allowing me the 8% preference on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$5M allowing me the 7% preference on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

“I agree to submit a report, or reports, to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31, the following to be true and accurate:

“In conjunction with this procurement and the requirements of this business' application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under Sections 13-1-21 or 13-1-22 NMSA 1978, when awarded a contract which was on the basis of having such veteran's preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.

“I understand that knowingly giving false or misleading information on this report constitutes a crime.”

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

\_\_\_\_\_  
(Signature of Business Representative)\*      (Date)

\*Must be an authorized signatory for the Business. The representations made in checking the boxes constitutes a material representation by the business that is subject to protest and may result in denial of an award or termination of award of the procurement involved if the statements are proven to be incorrect.

***APPENDIX G***

***Resident Vendor Certificate***

## ***APPENDIX G***

### ***Resident Vendor Certificate***

Qualifying applicants should attach the relevant certificate and any other documentation as specified by the New Mexico Taxation and Revenue Department and NMSA 1978, § 13-1-21.

For more information, see: <http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx>



## ***APPENDIX H***

### ***SAMPLE AFFIDAVIT***

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Offeror is required to provisionally complete the attached Agency Certification form and  
CIRCLE THE APPROPRIATE RESPONSE TO ITEMS 1 AND 2  
And CHECK THE CORRECT LINE IN ITEM 3.

Completion of the Agency Certification form requires Offeror to analyze its business association and determine whether any individual who has a substantial ownership interest (defined as greater than 20%) is required to disclose status as a current or former state employee or legislator or the family member of a current state employee or legislator.

Any individual required to disclose status as current or former state employee or legislator, or the family member of a current state employee or legislator must be prepared to submit an affidavit at the time the Contract is executed. A sample affidavit is attached hereto, and a final form will be submitted for execution at the time of Contract Award. Timely completion and return of the Affidavit will be critical.



APPENDIX I

**PRIVILEGED & CONFIDENTIAL**  
**ATTORNEY WORK PRODUCT**  
**ATTORNEY/CLIENT PRIVILEGE**

TO: (RMD Supervising Attorney or Adjustor)  
FROM: (Contractor)  
DATE:  
RE: (Case Name and Claim Number)  
(State Entity and/or State Employee(s))  
(Date of Loss)  
(Judge Assigned or Adjudicating Entity)  
(Court Case Number (if applicable))  
(Plaintiff Attorney(s))

**INITIAL RISK ANALYSIS**

1. What do you see as the significant legal or factual issues in the case?
  
2. In what way might the issues be resolved, assuming the facts as stated?
  
3. If litigation is undertaken, what you envision in terms of:
  - A. Any steps that should be taken immediately (*e.g.*, to prevent the running of a statutory deadline or to preserve evidence);
  - B. Legal research and factual investigation;
  - C. Possible pleadings (including cross-complaints), motions, and discovery the parties are likely to undertake;
  - D. The litigation's likely duration and expense; and
  - E. The range of recovery or exposure for the client (if reasonably based on the information provided in the first interview and known to you).

4. The possibility of early settlement and the feasibility of a minimal cost approach to the litigation.

APPENDIX J

**PRIVILEGED & CONFIDENTIAL**  
**ATTORNEY WORK PRODUCT**  
**ATTORNEY/CLIENT PRIVILEGE**

TO: (RMD Supervising Attorney or Adjustor)  
FROM: (Contractor)  
DATE:  
RE: (Case Name and Claim Number)  
(State Entity and/or State Employee(s))  
(Date of Loss)  
(Judge Assigned or Adjudicating Entity)  
(Court Case Number (if applicable))  
(Trial Date (if applicable))  
(Plaintiff Attorney(s))

**QUARTERLY STATUS REPORT**

**Has a scheduling order been entered in this case?** If not, when do you anticipate this will be completed?

**What is the case status?** Please provide a short description of the current status of the proceedings, anticipated motions and discovery, and settlement discussions or their absence.

**Please review your initial Litigation Summary and Risk Analysis**

- Have any new facts become available?
- Have you identified any new legal issues? Defenses?
- Has your assessment of the strengths and weaknesses of your factual and legal position changed?
- Has your assessment of the possible results and probabilities changed?
- Has your strategy in this matter changed?
- Has your anticipated legal budget changed?

**Additional Comments/Personal Impressions:**

**Conclusion and Recommendation:**

APPENDIX K

**PRIVILEGED & CONFIDENTIAL**  
**ATTORNEY WORK PRODUCT**  
**ATTORNEY/CLIENT PRIVILEGE**

TO: (RMD Supervising Attorney or Adjustor)  
FROM: (Contractor)  
DATE:  
RE: (Case Name and Claim Number)  
(Named State Entity(ies) and/or State Employee(s))  
(Date of Loss)  
(Judge Assigned or Adjudicating Entity)  
(Court Case Number (if applicable))  
(Trial Date (if applicable))  
(Mediation Date and Mediator (if applicable))  
(Plaintiff Attorney(s))  
(Recommended Settlement Authority)

**LITIGATION RISK ANALYSIS**

- a. **Describe the parties and how they are related:** (Note: Do not merely refer to the parties as the plaintiff/defendant; include more descriptive terms to identify the relationship/status at issue, e.g., supervisor/employee)
- b. **Procedural History:**
- What is the stage of litigation?
  - Are there any important upcoming dates or events (i.e. dispositive motions, depositions, or hearings)?
- c. **Substantive Facts:**
- What is/are the cause(s) of action?
  - What is the demand and/or relief requested?

- Provide a description of the facts of the case.
  
- d. **What is your assessment of the strengths and weaknesses of your factual and legal position?** Please include such factors as the substance and impact of the evidence, the availability and quality of witnesses, the sympathy or not of the adversary, the friendliness or hostility of the tribunal, favorable or adverse case law, media attention, and the competence and experience of opposing counsel.
  
- e. **What are the possible results and probabilities?**
  - Assessment of damages (include likely exposure range)
  - Damages breakdowns (medicals, wages, punitive, fee shifting, statutory, etc...)
  - Assessment of comparative fault (if applicable)
  
- f. **Total legal budget through trial?** (Delineate what has been billed and anticipated future billing)
  - Discovery
  - Motions Practice
  - Experts
  - Trial
  - Total
  
- g. **Additional Comments/Personal Impressions:**
  
- h. **Conclusion and Recommendation:** (Include a recommended monetary settlement amount or range)



APPENDIX L

**PRIVILEGED & CONFIDENTIAL**  
**ATTORNEY WORK PRODUCT**  
**ATTORNEY/CLIENT PRIVILEGE**

**ROOT CAUSE ANALYSIS**

As you are aware, RMD resolved the above referenced case for \$ \_\_\_\_\_  
Enclosed is a copy of the Judgment dated \_\_\_\_\_

The purpose of a root cause analysis is to help guide state entities in thinking about the root causes of the litigation in to help them avoid future legal difficulties.

Examples of a “Root Cause” include, but are not limited to:

- Lack of understanding or knowing
- Failure to follow policy or procedure
- Inadequate planning or review of plans
- Inaccurate corporate strategy
- Lack of communication
- Lack of preventative maintenance
- Inadequate design of equipment or system
- Beliefs ingrained in organizations culture
- Extrinsic factors
- Barriers or administrative/physical controls

**PROBLEM:**

**ROOT CAUSE:**