



**GRANT COUNTY, NM**

**REQUEST FOR PROPOSALS**

**RFP NO: 19-06**

**ATTORNEY AND LEGAL SERVICES**

**Commodity Code & Description:** 96149 – Legal Services, Attorneys

**Purchasing Contact & Mail/Deliver to:** Randy J. Hernandez, Chief Procurement Officer  
Grant County Manager's Office  
1400 Highway 180 East  
Silver City, New Mexico 88061

**Purchasing Contact Information:** Phone: (575) 574-0016  
Email: rhernandez@grantcountynm.com

**Introduction:**

The County of Grant (hereinafter referred to as "County") is requesting competitive sealed proposals from qualified individuals and/or law firms to provide Attorney and Legal Services for Grant County ensuring maximum protection of legal rights and continued operation consistent with federal, state and local laws.

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### SEQUENCE OF EVENTS

	<b>Action</b>	<b>Responsibility</b>	<b>Date(s) and Time</b>
1	Issuance of RFP	County	June 10, 2019
2	Proposal Question Deadline	Potential Offeror(s)	June 24, 2019, by 5:00 p.m.
3	Notice to County of Intent to Propose ( <i>Mandatory</i> )	Potential Offeror(s)	June 24, 2019, by 5:00 p.m.
4	Response to Questions	County	July 1, 2019, by 5:00 p.m.
<b>5</b>	<b>Proposal Submission Deadline</b>	<b>Offeror(s)</b>	<b>July 8, 2019, at 3:00 p.m.</b>
6	Proposal Evaluation	County	July 9 – July 17, 2019
7	Selection of Finalists	County	July 17, 2019
8	Oral Presentations/Interviews (optional)	County & Offeror(s)	TBD
9	Contract Award	County	July 25, 2019
10	Contract Negotiations and Finalization	County & Offeror(s)	July 25 – August 2, 2019

Dates/Times prior to the submission deadline are subject to change and will be done so with issuance of an addendum.

**COUNTY OF GRANT, NEW MEXICO**  
**NOTICE TO OFFERORS**

**RFP 19-06: Attorney and Legal Services**

Notices for solicitations will no longer be sent via mail, unless a vendor specifically requests notification by mail. Electronic notices will be sent via email, posted on our website and sent via "Vendor Registry." Vendors may register for "Vendor Registry" on the County's website at [www.grantcountynm.com](http://www.grantcountynm.com).

RFP documents may be retrieved by accessing the County's website, [www.grantcountynm.com](http://www.grantcountynm.com), by calling (575) 574-0016 or visiting the Grant County Manager's Office located at 1400 Highway 180 East, Silver City, New Mexico.

The opening of the sealed proposals will be conducted in private in order to maintain the confidentiality of the information/data provided. Proposals will remain confidential during the negotiation process. Offerors submitting proposals may be afforded an opportunity for discussion and revision of proposals. Revisions may be permitted after submission of proposals and prior to award.

The County will open all proposals, assign an evaluation committee and evaluate all proposals; determine the need for, conduct any negotiations and make a final recommendation to the Board of County Commissioners for award of the agreement or contract.

The agreement or contract award shall be made to the responsible Offeror(s) whose proposal(s) is most advantageous to the County, taking into consideration the evaluation factors set forth in the RFP. The award of an agreement or contract for professional legal services shall be made based upon the criteria listed within this RFP.

The County reserves the right to reject any or all proposals, cancel the RFP in its entirety or to waive irregularities at its option when it is in the best interest of the County.

## SECTION 1 - INSTRUCTIONS

### 1) COMMUNICATIONS

In an effort to create a more competitive and unbiased procurement process, the County of Grant (County) desires to establish a single point of contact throughout the procurement process. From the issue date of this RFP, until a Successful Offeror(s) is selected, all requests for clarification or additional information regarding this RFP or contacts with the County personnel concerning this RFP or the evaluation process must be solely to the contact person (or their designee) listed on the cover page of this RFP.

The Offeror, including any person affiliated with or in any way related to the Offeror, is strictly prohibited from any contact with members of the Board of County Commission or County staff on any matter having to do in any respect with this RFP other than outlined herein. Offerors shall have no claim against the County for failure to obtain information made available by the County which the Offeror could have remedied through the exercise of due diligence.

### 2) PRE-RESPONSE INFORMATION AND QUESTIONS

Each response that is timely received will be evaluated on its merit and completeness of all requested information. In preparing responses, Offerors are advised to rely only upon the contents of this RFP, its enclosed documents and any written clarifications or addenda issued by the County. If an Offeror finds a discrepancy, error, or omission in the RFP package, or requires any written addendum thereto, the Offeror is requested to notify the Purchasing contact noted on the cover of this RFP, so that written clarification may be sent to all prospective Offerors. *The County is not responsible for any oral instructions.* All questions must be submitted in writing to the Purchasing Contact on, or before, the Proposal Question Deadline indicated on the Sequence of Events.

### 3) RFP MODIFICATIONS

Clarifications, modifications, or amendments may be made to the RFP at any time prior to the Response Deadline at the discretion of the County. Potential Offerors must return the **mandatory** "Notice to County of Intent to Propose" Form (Appendix A) in order to submit a proposal. This form may be hand-delivered, returned by facsimile, electronic mail, registered mail, certified mail, or any other type of carrier by the deadline stated. This is to ensure your firm is placed on the Procurement Distribution List to be notified of any change or amendments to the RFP documents, and written answers to inquiries.

### 4) PRE-PROPOSAL CONFERENCE

The date, time and location of the meeting, if any, are indicated on the Sequence of Events of this RFP. All Offerors are strongly encouraged to attend any scheduled meetings.

### 5) RESPONSE SUBMISSION

To be considered, the Response must be prepared in the manner and detail specified in this RFP.

- a. Responses must be submitted to the Purchasing Contact at the address indicated on the cover page of this RFP before the date and time indicated as the deadline. It is each Offeror's responsibility to ensure that the County's Chief Procurement Officer receives its Response prior to the deadline. This responsibility rests entirely with the Offeror, regardless of delays resulting from postal handling or for any other reasons. Responses will be accepted at any time during the normal course of business only, said hours being 8:00 a.m. to 5:00 p.m. local time, Monday through Friday, except for legal holidays as posted on the County's website.
- b. Responses received after the above deadline will not be accepted and will be returned to the Offeror unopened. The Chief Procurement Officer's timestamp shall be the official time.
- c. The opening of a Response does not constitute the County's acceptance of the Offeror as a responsive and responsible Offeror.
- d. Responses must be enclosed in a **sealed envelope, box, or package**, and clearly marked on the outside with the following: project name, project number, deadline date and time, and Offeror's name, address, phone, fax, email, and contact name.
- e. Submission of a Response establishes a conclusive presumption that the Offeror is thoroughly familiar with the RFP and specifications and terms of the Sample Contract, and the County's Procurement Policy and that the Offeror understands and agrees to abide by each and all of the stipulations and requirements contained therein.
- f. All prices and notations if applicable must be typed or printed in ink. No erasures are permitted. Mistakes may be crossed out and the person(s) signing the Response must initial corrections in ink.
- g. Responses sent by telegraph, facsimile, or other electronic means will not be considered.

- h. All costs incurred in the preparation and presentations of the Response, as well as any resulting contract, are the Offeror's sole responsibility; no such costs will be reimbursed to any Offeror. All documentation submitted with the Response will become the property of the County.
- i. Responses are subject to public disclosure after the award in accordance with state law under the Freedom of Information Act.

**6) RESPONSE SIGNATURES**

An authorized official must sign the Responses. Each signature represents binding commitment upon the Offeror to provide the goods and/or services offered to the County if the Offeror is determined to be the most responsive and responsible Offeror.

**7) CONTRACT AWARD**

The County reserves the right to withdraw the RFP, to award to one Offeror, to any combination of Offerors, by item, group of items, or total RFP. The County may waive informalities if it is in the County's interest. The award shall be made to the responsible Offeror whose proposal is the most advantageous to the County taking into consideration the evaluation factors set forth in the Request for Proposals. Responses will be evaluated and assigned scores. The Offeror(s) to whom the recommendation to award is made will be notified at the earliest possible date. The County will then negotiate a contract with the top ranked Offeror(s) for a firm fixed price agreeable to both parties. If, for any reason, a contract is not executed with the selected Offeror within 14 days, then the County may recommend the next most responsive and responsible Offeror. Award of this RFP is contingent upon the availability of funds, within the sole discretion of the County. Acceptance of the Offeror's RFP does not constitute a binding contract. There is no contract until the County's policies have been fulfilled. The County is not liable for performance costs until the successful Offeror has been given a fully executed contract. Failure to accept the terms and conditions of the County's Standard Contract may deem the Offeror non-responsive.

**8) RESPONSE MODIFICATIONS**

Clarifications, modifications, or amendments to any Response that has been submitted, but prior to the Response Deadline Date, may be made only within the discretion and written approval of the Chief Procurement Officer.

**9) DUPLICATE RESPONSES**

No more than one (1) Response from any Offeror, including its subsidiaries, affiliated companies and franchisees will be considered by the County. In the event multiple Responses are submitted in violation of this provision, the County will have the right to determine which Response will be considered, or at its sole option, reject all such multiple responses.

**10) WITHDRAWAL**

Responses may only be withdrawn by written notice prior to the Deadline date set for the opening of response. No response may be withdrawn after the deadline for submission.

**11) REJECTION**

The County reserves the right to reject any or all Responses, or to accept or reject any Response in part, and to waive any minor informality or irregularity in Responses received, if it is determined by the Chief Procurement Officer or designee that the best interest of the County will be served by doing so. The County may reject any Response from any person, firm or corporation in arrears or in default to the County on any contract, debt, or other obligation, or if the Offeror is debarred by the County from consideration for a contract award, or if Offeror has committed a violation of the ethics or anti-kickback provisions of the County's Purchasing Policy which resulted in a termination of a contract or other material sanction within the two (2) years immediately preceding the date of issuance of this document.

**12) PROCUREMENT POLICY**

Procurement for the County will be handled in a manner providing fair opportunity to all businesses. This will be accomplished without abrogation or sacrifice of quality and as determined to be in the best interest of the County. The Chairman of the Board, or his/her designee, has the vested authority to execute all County contracts, subject to board approval where required.

**13) COMPLIANCE WITH LAWS**

The Offeror must comply with all federal, state, and local laws and policies. The laws of the State of New Mexico shall govern this procurement and any agreement with Offerors that may result. In submitting a proposal, the Offeror represents that the Offeror has familiarized himself with the nature and extent of the RFP dealing with federal, state, and local requirements that are part of this RFP. The successful Offeror(s) shall perform work under the resultant Contract in strict accordance with the latest version of all State and local codes, ordinances, and regulations governing the work involved. All materials and labor necessary to comply with the rules, regulations and ordinances shall be provided by the successful Offeror(s). In the event of a conflict between various codes and standards, the more stringent shall apply.

**14) CONFIDENTIALITY**

It is understood by the Offeror and the County that the County is a New Mexico political subdivision and, as such, is subject to the provisions of the New Mexico Inspection of Public Records Act, Section 14-2-1 through 14-2-12 NMSA 1978 and the Public Records Act, Chapter 14 Article 3 NMSA 1978. In the event Offeror has responded to a County Request for Proposal (RFP) and marked all or any part of the information submitted as "CONFIDENTIAL INFORMATION," the County agrees to notify Offeror of any third-party request for any rates, terms, compensation amounts, or other information documented in the Purchase Order, Agreement, or Contract. To the extent Offeror provides the County with written direction to withhold such requested Confidential Information or Proprietary Information and litigation results, Offeror agrees that the action would be brought in a New Mexico court of competent jurisdiction under New Mexico law. Offeror, being aware of said facts, agrees to provide legal counsel on behalf of the County in any such litigation and shall bear the complete cost of litigation, including attorney fees and court costs. If Offeror fails or refuses to provide legal counsel at its expense within ten (10) calendar days after written notification, as aforesaid, such failure may result in the County agreeing to release the Purchase Order, Agreement, or Contract or any portion thereof which is relevant to the denied request.

Confidential data are normally restricted to confidential financial information concerning the Offeror's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, §57-3A-1 to §57-3A-7 NMSA, 1978.

**15) NON-DISCRIMINATION**

The County will not contract with any person or firm that discriminates against employees or applicants for employment because of any factor not related to job performance. The Offeror must comply with all federal, state and local laws and policies that prohibit discrimination in employment contracts. The Offeror must include in its subcontracts provisions that prohibit subcontractors from discriminating in their employment practices.

**16) NO RESPONSE**

Businesses who receive this RFP but who do not submit a Response should return a notice stating the reason(s) for not responding. Failure to return this may result in removal of the business' name from all bidder lists.

**17) CONTRACT NEGOTIATION**

All Responses must be firm for at least 120 days from the due date of the Response. If, for any reason, a contract is not executed with the selected Offeror within 30 days after notice of recommended award, then the County may recommend the next most responsive and responsible Offeror. There is no contract until the County's policies have been fulfilled.

**18) DISQUALIFICATION OF OFFERORS**

Any one or more of the following causes may be considered sufficient for the disqualification of an Offeror and the rejection of the Response:

- a. Evidence of collusion among Offerors.
- b. Lack of competency as revealed by either financial, experience, or equipment statements.
- c. Lack of responsibility as shown by past work.
- d. Uncompleted work under other contracts which, in the judgment of the County, might hinder or prevent the prompt completion of additional work if awarded.

**19) DISCUSSIONS**

Discussions may be conducted with responsible Offerors, in order to clarify and assure full understanding of, and conformance to, the solicitation requirements. Discussions may be conducted with Offerors who submit Responses determined to be reasonably susceptible of being elected for award, but Responses may be accepted without such discussions. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of Responses. Such revisions may be permitted after submission and prior to award for the purpose of obtaining best and final offers. If during discussions there is a need for any substantial clarification of or change in the RFP, the RFP shall be amended to incorporate such clarification or change. The Offeror shall reduce any substantial oral clarification of a Response to writing.

**20) SUBCONTRACTORS**

Offeror shall have the right to subcontract work with prior written approval from the County. The County reserves the right to investigate the qualifications and/or background of any subcontractor requested and shall retain the right to refuse approval of any or all subcontractor(s) at its discretion. The County reserves the right to approve or reject, in writing, any proposed Subcontractor. If the County rejects any proposed Subcontractor in writing, the Successful Offeror shall be responsible to assume the proposed Subcontractor's responsibilities. The Successful Offeror may propose another Subcontractor if it does not jeopardize the effectiveness or efficiency of the contract. Nothing contained in the Response or in the contract shall create or be construed as creating any contractual relationship between any Subcontractor and the County.

The Contract will not be assignable to any other business entity without the County's approval.

**21) OFFEROR RESPONSIBILITIES**

The Offeror must be capable, either as a firm or a team, of providing all services as described under SECTION 2 – REQUIREMENTS AND SCOPE OF SERVICES and to maintain those capabilities until notification of the fact that their Response was unsuccessful. Exclusion of any service for this Response may serve as cause for rejection. The Successful Offeror must remain capable of providing all services as described under SECTION 2 and must maintain those capabilities until the agreement is successfully finished. The successful Offeror will be responsible for all services in this Response whether they are provided or performed by the Successful Offeror or Subcontractor(s). Further, the County will consider the Successful Offeror to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the cost of any contract. The Successful Offeror must identify all Subcontractors and the Services they provide. The Successful Offeror is responsible for all payments and liabilities of all Subcontractor(s).

It is strongly recommended that the Offeror(s) attend the Pre-Response Conference, if any.

**22) COUNTY PARTICIPATION**

The County will provide appropriate personnel support for implementation of these agreements. The Offeror's Response should identify County Full-Time Employees required and tasks to be performed by County personnel. For the purpose of contract administration, the County will designate a person to serve as County Contract Manager. The County Contract Manager will serve as the primary liaison between the County and the Successful Offeror and will coordinate overall management and administration of the contract for the County.

**23) DISCLOSURE OF CONTENTS**

All information provided in the Response shall be held in confidence and shall not be revealed or discussed with competitors, until after award of the contract except as provided by law or court decision. All material submitted with the Response becomes the property of the County and may be returned only at the County's option.

Offerors must make no other distribution of their Responses other than authorized by this RFP. An Offeror who shares cost information contained in its Response with other County personnel or competing Offeror personnel shall be subject to disqualification.

Offerors shall not be provided any information about other Responses or prices or where the Offeror stands in relation to others at any time during the evaluation process. Any request for such information by an Offeror, its subcontractor or an affiliated party may be viewed as a compromise to the evaluation process and the requesting Offeror may be eliminated from further consideration.

**24) PROPOSAL EVALUATION**

An evaluation committee will perform the evaluation of proposals in private. Points will be allocated by each member. Each member's point totals will be translated into a numeric ranking of all proposals. The individual member rankings will be totaled together to determine the overall ranking of proposals.

It is at the discretion of the Evaluation Committee to hold interviews with the three highest-ranked proposals. The Evaluation Committee may award the selection based on the results of the ranking without interviews. If fewer than three proposals are received the Evaluation Committee may recommend an award to the Governing Body for approval or direct that the RFP be reissued.

During this time, the County of Grant may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors. The County reserves the right to contact, as a reference, current and/or previous entities that the Offeror has provided services for.

**25) PROTESTS**

Any protest by an Offeror must be timely and in conformance with Section 13-1-172 NMSA 1978 and applicable procurement regulations. Protests must be written and must include the name and address of the protestor and the request for proposals number. It must also contain a statement of grounds for protest including appropriate supporting exhibits, and it must specify the ruling requested from the County of Grant. The protest must be delivered to the County of Grant, Chief Procurement Officer, 1400 Highway 180 East, Silver City, New Mexico within 24 hours after the facts or occurrences giving rise thereto, but in no case later than 15 calendar days after the facts or occurrences giving rise thereto. Protests received after the 15-day period deadline will not be accepted. In the event of a timely protest under this section, the County of Grant shall not proceed further with procurement unless the Procurement Officer makes a determination that the award of Agreement is necessary to protect substantial interests of the Contracting Agency (13-1-173 NMSA 1978).

The Chief Procurement Officer or designee shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved Offeror concerning procurement. The Chief Procurement Officer or designee shall promptly issue a determination relating to the protest. The aggrieved Offeror has the right to judicial review of the determination pursuant to 13-1-183 NMSA 1978.

**26) 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.

**27) 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 mandatory requirements and/or doing so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

**28) CHANGE IN CONTRACTOR REPRESENTATIVES**

The County of Grant reserves the rights to require a change in contractor representatives if the assigned representatives are not, in the opinion of the County of Grant, meeting its needs adequately. If the contractor wishes to change its designated representative, that change must be approved by the County of Grant.

**29) NOTICE**

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

**30) COUNTY RIGHTS**

The County of Grant reserves the right to accept all or a portion of an Offeror's proposal.

**31) MULTIPLE AWARDS**

The County reserves the right to make multiple awards under this procurement.

**32) RIGHT TO PUBLISH**

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

**33) OWNERSHIP OF PROPOSALS**

All documents submitted in response to this Request for Proposals shall become the property of the County. However, any technical or user documentation submitted with the proposals of non-selected Offerors shall be returned after the expiration of the protest period. Unsuccessful Offerors may retrieve all but one copy of their proposal as soon as award is made. Any unsuccessful Offeror wishing to retrieve copies of their proposal must do so within two weeks after the award.

**34) 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.

**35) STATUS OF SUCCESSFUL OFFERORS.**

The successful Offeror(s) is an independent contractor performing services for the County and neither he/she nor his/her agents or employees shall, as a result of the resultant Contract, accrue leave, retirement, insurance, bonding authority, use of County vehicles, or any other benefits, prerequisites or allowances normally afforded only to employees of the County. The successful Offeror(s) acknowledges that all sums received under the resultant Contract are personally reportable by him/her for income, self-employment and other applicable taxes.

**36) ASSIGNMENT/TRANSFER**

Assignment or transfer of this contract without written consent of County may be construed by the County as a breach of contract sufficient to cancel this agreement at the discretion of the County.



**37) EXCISE AND SALES TAX**

The prices herein must not include any Federal excise taxes or sales taxes imposed by any State or Municipal Government. Such taxes, if applicable, must be included by the contractor when submitting invoices for payment.

**38) DEBARMENT, SUSPENSION, AND INELIGIBILITY**

By submitting a response to this Request for Qualifications, the business (Bidder/Offeror/Contractor) represents and warrants that it is not debarred, suspended, or placed in ineligibility status under the provisions of Federal Executive Order 12549 and FAR 521.209-5.

**39) PROCUREMENT UNDER EXISTING CONTRACTS**

In accordance with NMSA 13-1-129 of the Procurement Code, Offerors are hereby notified that other government entities within the State of New Mexico, or as otherwise allowed by their respective governing directives, may contract for the goods or services included in this procurement document with the awarded contractor. Contractual engagements accomplished under this provision shall be solely between the awarded vendor and the contracting government entity, with no obligation by Grant County.

**40) RESPONSIBLE OFFERORS**

In accordance with NMSA 13-1-83 of the Procurement Code, Offerors to whom award of an Agreement is under consideration shall submit upon request, information and data to prove that their financial resources, production of service facilities, personnel, and service reputation and experience are adequate to make satisfactory delivery of the services described in this Request for Proposals.

**41) CONTRACT TERM**

The County intends to enter into an initial one (1) year contract with the successful Offeror(s) for the services contemplated by this RFP. Any such contract will be subject to approval by the governing body, availability of funds and other terms and conditions. In no such case will the contract including all renewals exceed a total of four (4) years in duration. Subsequent contract for the same services will be subject to a new RFP process and to the governing body approval as called for by law and County policies. The successful firm shall commence work only after the full execution of a contract between the County and the chosen firm(s).

**42) INSURANCE**

The legal firm will be required to provide proof of, and maintain, insurance prior to performing work for the County. The requirements are as follows:

- a. Professional Liability:
  - Minimum \$1,050,000.00 aggregate
- b. Workers Compensation:
  - Contractor shall comply with the provisions of the Worker's Compensation Act.
- c. Increased Limits:
  - If, during the life of this Agreement, the Legislature of the State of New Mexico increase the maximum limits of liability under the Tort Claims Act (NMSA 1978, Section 41-4-1 et seq., Contractor shall increase the maximum limits of any insurance required herein.
- d. Malpractice/Errors & Omissions Insurance:
  - Contractor shall procure and maintain during the life of this Agreement professional liability (errors and omissions) insurance with policy limits of not less than \$1,050,000.00 per occurrence, \$2,000,000.00 per aggregate.
- e. Grant County Named as Additionally Insured:
  - This condition is required for all insurances requested except Professional Liability.

Coverage must be as broad as the coverage provided to the insured. Coverage must be primary and non-contributory before any other insurance or self-insurance. A copy of endorsement for this coverage must be provided. The certificate must state that coverage afforded under the policies will not be canceled or allowed to expire until at least 30 days prior written notice has been given to the County.

## SECTION 2 - REQUIREMENTS AND SCOPE OF SERVICES

### 1) REQUIREMENTS FOR PROPOSAL

The purpose of this solicitation is to enter into a contract with a professional individual and/or law firm that will be ready and able to perform any or all of the services described herein. There is no guarantee that the County will require any or all of such services.

#### **Notice of Intent to Propose**

Potential Offerors must return the *mandatory* "Notice to County of Intent to Propose" Form (Appendix A) in order to submit a proposal. This form may be hand-delivered, returned by facsimile, electronic mail, registered mail, certified mail, or any other type of carrier by the deadline stated. This is to ensure your firm is placed on the Procurement Distribution List to be notified of any change or amendments to the RFP documents, and written answers to inquiries.

#### **Professional Qualifications**

All persons within the proposing law firm that will be providing legal opinions and guidance must hold a minimum of a Juris Doctor (J.D.) degree from an American Bar Association recognized law school AND must be a member of a State Bar. Proof of compliance with BOTH requirements must be provided within the proposal. Offerors must provide a detailed resume and/or curriculum vitae including education and legal experience of attorney(s) who will provide the services.

Offeror must presently be licensed by the State of New Mexico to practice law and must be in good standing.

#### **Capability and Agreement to Perform**

Offeror certifies that they are capable and qualified to provide the products or services required by this RFP and agrees to perform the Scope of Services as specified in this RFP.

Offeror must agree not to engage in any representation that may constitute a conflict of interest or appearance of a conflict of interest with the County. The proposal submission must include a description of any conflicts of interest the Offeror or any individual attorney associated with the Offeror may have if awarded a contract with an explanation of how the Offeror proposes to address the conflicts.

### 2) SCOPE OF SERVICES:

The County desires to enter into a non-exclusive contractual relationship with a practicing attorney/law firm to provide legal services to the County; prepare and examine contracts and other legal documents for the County; develop, amend and work with County employees on policies, including but not limited to policies for the Detention Center, Personnel, Land Use and other County Departments; provide legal counsel with respect to personnel matters; draft ordinances and ordinance amendments and resolutions; and generally perform the function of a County Attorney as may be required by the Board of County Commissioners, including but not limited to the following:

1. Attend all meeting of the Board of County Commission including Work Sessions, Regular Meetings, Special Meetings and Hearings, and Executive Sessions.
2. Attend any special board or committee meetings, as requested by the Board of Commissioners or the County Manager. Special committees may include Road, Safety, Personnel, Subdivision, Jail, etc.
3. Provide written legal opinions on the County, as requested by the Board of County Commission or the County Manger.
4. Advise Elected Officials and/or Department Heads, as to the legal conduct of his/her office, upon authorization of the Board of County Commissioners or the County Manager.
5. Draft and pass upon the legality of all ordinances, resolutions, policies, contracts, bonds and other instruments affecting the interests of the County.
6. Conduct all research, as required by the scope of the contract and provide all clerical and secretarial work associated with such research.
7. Represent the County as its attorney in all minor Court proceedings.
8. Assist the Chief Procurement Officer in review/preparation of procurement contracts, Request for Proposals, Invitations to Bids and legal aspects as related to New Mexico State Statutes as well as procurement codes.
9. Submit a monthly invoice to the County Manager's office. The invoice must detail who performed the service, the time involved and the specific question or matter addressed. The invoice will need to be broken out on work done on forfeitures and grants and the County Manager may request additional expenses to be broken out by Department and/or subject matter. Payment will be made within thirty (30) business days after acceptance.
10. Legal services provided to unauthorized employees or the public and not authorized will not be considered.

## SECTION 3 - EVALUATION CRITERIA AND SUBMITTAL REQUIREMENTS

- 1) **EVALUATION CRITERIA:** All proposals will be reviewed and ranked by an Evaluation Committee. The following factors will be considered in making the selection of the qualified Offerors with one thousand (1,000) maximum possible points:

### **DESIREABLE SPECIFICATIONS**

**350 POINTS**

**a) Experience with Contract Law**

Offerors must be familiar with, and experienced in dealing with, contract law in a local public body setting. This must include litigation experience. Offerors must describe, in narrative form, how they will meet this requirement. The response must include the description of a situation, and the resolution and outcome, that the Offeror feels best describes their experience and success in this area

**b) Experience with Employment Law**

Offerors must be familiar with, and experienced in dealing with employment law in a local public body setting. This must include litigation experience. Offerors must describe, in narrative form, how they meet this requirement. The response must include the description of a situation, and the resolution and outcome, that the Offeror feels best describes their experience and success in this area. Offeror must explain methods of staying up to date with continued changes in the laws regarding Employment Law.

**c) Experience with Procurement Law**

Offerors must be familiar with, and experienced in dealing with, procurement law in a local public body setting. This must include litigation experience. Offerors must describe, in narrative form, how they meet this requirement. The response must include the description of a situation, and the resolution and outcome, that the offeror feels best describes their experience and success in this area.

**d) Experience with Tort Litigation**

Offerors must be familiar with, and experienced in dealing with, tort litigation in a local public body setting. Offerors must describe, in narrative form, how they meet this requirement. The response must include the description of a situation, and the resolution and outcome that the Offeror feels best describes their experience and success in this area.

**e) Experience with Land Use and Property Law**

Offerors must be familiar with, and experienced in dealing with, land use and property law in a local public body setting. Offerors must describe, in narrative form, how they meet this requirement. The response must include the description of a situation, and the resolution and outcome, that the Offeror feels best describes their experience and success in this area.

**f) Experience with Creation & Enforcement of Local Ordinances**

Offerors must be familiar with, and experienced in dealing with, creating and enforcing ordinances in a local public body setting. Offerors must describe, in narrative form, how they meet this requirement. The response must include the description of a situation, and the resolution and outcome that the offeror feels best describes their experience and success in this area.

### **EXPERIENCE AND EDUCATION**

**300 POINTS**

**a) Experience with a New Mexico Public Body**

Offerors must have experience providing legal services to a New Mexico local public body. Offerors must describe, in narrative form, how they meet this requirement. The response must include the total number of years of experience being claimed. This must include a break-down per local public body, if experience with more than one local public body is being claimed. Offeror must provide names and current contact information for at least three (3) local public bodies or private companies for which your firm has provided similar services and must also complete the Offeror's Reference Form (Appendix D.) Offeror must also describe the type of service provided to each, when the service was performed and the duration of the service.

**b) Continued Education**

Offerors must describe, in narrative form, how they will meet this requirement. Offeror shall provide the educational trainings attended the past three (3) years and additional educational training relevant to County Government.

## **FEES**

**200 POINTS**

- a) Offeror must complete and submit the Cost Response Form (Appendix B), providing proposed hourly fees for accomplishing the scope of work. State gross receipts and local options taxes (if any) shall not be included in the proposed fees.

## **ESSENTIAL SERVICE RESPONSIBILITIES**

**150 POINTS**

a) **Accessibility**

Twenty-four hours a day, seven days a week, (“24/7”) access to legal services and advice is required to deal with urgent and unexpected legal matters. If awarded the contract, Offeror must be available 24/7, whenever needed, and easily accessible (including phone and email). Offeror must explain, in narrative format, how they will meet this requirement with a focus on their accessibility. Offeror must address their response time to the County on general matters for review, preparation of contracts, resolutions, etc.

b) **Document Preparation and Review**

Offeror must describe methods for handling preparation and review of documents to prevent or limit errors; typographical, formatting, wrong information, vendors, etc. County shall not be charged fees for corrections made to documents prepared by Offeror.

c) **Confidentiality & Records Retention**

Offerors must be familiar with, and experienced in dealing with confidentiality & records retention. Offerors must describe, in narrative form, how they maintain confidentiality in his/her office among the offerors staff. Offerors must also describe their methods for records retention. The offeror must list how they would address breaches, documents being sent to wrong parties within an organization and outside of an organization. Offeror must also describe methods for training staff on confidentiality and records retention procedures.

**Past Performance:** The Evaluation Committee also may consider past performance of the Offeror on other contracts with the County or other entities. Responses will be evaluated equally and fairly; no preference will be given to any Offeror based solely on previous experience with the County or to an incumbent thereof. The County reserves the right to make additional inquiries and may request the submission of additional information. A serious deficiency in any one category may be grounds for rejection of the proposal regardless of the overall score.

**Oral Presentations/Interviews:** It is at the discretion of the Evaluation Committee to hold oral presentations/interviews with the Offerors who are deemed, on the basis of selection criteria, fully qualified and best suited among those submitting proposals. If oral presentations/interviews are held, the oral presentations/interviews will be based on re-evaluation of the above criteria.

The Evaluation Committee may recommend an award based on the results of the ranking without oral presentations/interviews. If fewer than three proposals are received the Evaluation Committee may recommend an award to the Governing Body for approval or direct that the RFP be reissued.

During this time, the County may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. Discussions *shall not* be initiated by the Offerors.

**Resident Business Preference OR Resident Veteran Business Preference:** The County will award an additional fifty (50) points (1,000 x 5%.) to a resident business OR one hundred (100) points (1,000 x 10%.) to a resident veteran business that has annual gross revenues of up to three million (\$3,000,000.00) in the preceding tax year as outlined in sections 13-1-21 thru 13-1-22 NMSA 1978. The Resident Business/Veteran Business Preference Certification Form (Appendix E) must be completed.

The County will not award Offerors both a resident business preference and a resident veteran business preference.

## 2) PROPOSAL FORMAT REQUIREMENTS:

### a. NUMBER OF COPIES

One (1) unbound original, plus five (5) copies (six total) and one PDF copy on a USB drive containing no other material than the RFP response. The original must be marked "ORIGINAL." Each copy, including electronic must be identical to the original.

### b. RESPONSE FORMAT

Each proposal should be prepared simply and economically. Your proposal should be as clear and concise as you can make it while still providing the Evaluation Committee with information addressing the requirements in each of the categories stipulated in the RFP. Legibility, clarity and completeness are essential. Submittals may utilize either single-sided or double-sided copying and be bound with numbered tab dividers corresponding to the requirements contained in the balance of this section.

### c. MANDATORY ITEMS TO BE INCLUDED IN THE PROPOSAL

1. All Items Identified in this section (Section 3)
2. Required Forms (Section 4):
  - Appendix A
  - Appendix B
  - Appendix C
  - Appendix D
  - Appendix E
  - Appendix F
  - Appendix G

### d. MAXIMUM PAGE LIMITATION AND EXCLUSIONS

Proposals shall not exceed twenty (20) pages in length. Double sided pages must be numbered separately and will be counted as two (2) pages. Any 11"x17" pages will be counted as two (2) pages and any 24"x36" pages will be counted as four (4) pages. Proposals exceeding the maximum page limitation will be rejected and will not be evaluated. The page limitation will only be increased by addendum.

The following pages will be *excluded* from being counted as part of the maximum page limitation:

- Front and Back Covers
- Title Page
- Table of Contents
- Page Dividers
- Mandatory/Required Forms
- The Agreement, Insurance Certification Form, other certifications, and any contractual considerations

## SECTION 4 – SAMPLE CONTRACT

### (EXAMPLE) LEGAL SERVICES CONTRACT

**THIS AGREEMENT** is made and entered into by and between the County of Grant, hereinafter referred to as the "County" and \_\_\_\_\_ hereinafter referred to as the "Contractor", and is effective as of the date set forth below upon which it is executed by the Board of County Commissioners.

IT IS AGREED BETWEEN THE PARTIES:

#### 1. Scope of Work.

The Scope of work shall consist of, but not limited to, the following:

1. Attend all meeting of the Board of County Commission including Work Sessions, Regular Meetings, Special Meetings and Hearings, and Executive Sessions.
2. Attend any special board or committee meetings, as requested by the Board of Commissioners or the County Manager. Special committees may include Road, Safety, Personnel, Subdivision, Jail, etc.
3. Provide written legal opinions on the County, as requested by the Board of County Commission or the County Manger.
4. Advise Elected Officials and/or Department Heads, as to the legal conduct of his/her office, upon authorization of the Board of County Commissioners or the County Manager.
5. Draft and pass upon the legality of all ordinances, resolutions, policies, contracts, bonds and other instruments affecting the interests of the County.
6. Conduct all research, as required by the scope of the contract and provide all clerical and secretarial work associated with such research.
7. Represent the County as its attorney in all minor Court proceedings.
8. Assist the Chief Procurement Officer in review/preparation of procurement contracts, Request for Proposals, Invitations to Bids and legal aspects as related to New Mexico State Statutes as well as procurement codes.
9. Submit a monthly invoice to the County Manager's office. The invoice must detail who performed the service, the time involved and the specific question or matter addressed. The invoice will need to be broken out on work done on forfeitures and grants and the County Manager may request additional expenses to be broken out by Department and/or subject matter. Payment will be made within thirty (30) business days after acceptance.
10. Legal services provided to unauthorized employees or the public and not authorized will not be considered.

#### 2. Compensation.

A. The County shall pay to the Contractor in full payment for services satisfactorily performed \_\_\_\_\_ dollars per month, plus the applicable New Mexico gross receipts tax, which presently totals \_\_\_\_\_ per month. The total amount payable to the Contractor under this Agreement, excluding gross receipts tax and expenses, shall not exceed \$ \_\_\_\_\_. In no event will the Contractor be paid any amount in excess of the specified total amount payable without this Agreement being amended in writing.

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work. All invoices **MUST BE** received by the County 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, specified on a minimum of a quarter hour basis, and expenses incurred. If the County 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 County 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 County shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

D. The payment of taxes due for any money received under this Agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's Federal and State tax identification number(s).

#### 3. Term.

This Agreement is for one year, and shall automatically extend for each subsequent year for a total of four years, unless terminated

(SAMPLE CONTRACT CONTINUED)

pursuant to paragraph 4, infra. In accordance with Section 13-1-150 NMSA 1978, no contract term, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

**4. Termination.**

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

B. Termination Management. Immediately upon receipt by either the County 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 County; 2) comply with all directives issued by the County in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the County shall direct for the protection, preservation, retention or transfer of all property titled to the County 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 County upon termination and shall be submitted to the County as soon as practicable.

**5. Appropriations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Board of County Commissioners for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Board of County Commissioners, this Agreement shall terminate immediately upon written notice being given by the County to the Contractor. The County's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the County 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 County and are not employees of the County. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of county vehicles, or any other benefits afforded to employees of the County 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 County 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 County.

**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 County. 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 County. In all cases, the contractor is solely responsible for fulfillment of this Agreement.

**9. Release.**

Final payment of the amounts due under this Agreement shall operate as a release of the procuring agency of the County, its officers and employees, and the County 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 County.

(SAMPLE CONTRACT CONTINUED)

**11. Product of Service - Copyright.**

All materials developed or acquired by the Contractor under this Agreement shall become the property of the County and shall be delivered to the County 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 Section 10-16-4.3 NMSA 1978, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any County employee while such employee was or is employed by the County and participating directly or indirectly in the County's contracting process;

2) this Agreement complies with Section 10-16-7(B) NMSA 1978 because (i) the Contractor is not a public officer or employee of the County; (ii) the Contractor is not a member of the family of a public officer or employee of the County; (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 County, a member of the family of a public officer or employee of the County, or a business in which a public officer or employee of the County or the family of a public officer or employee of the County has a substantial interest, public notice was given as required by Section 10-16-7(B) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;

3) in accordance with Section 10-16-8(C) NMSA 1978, (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the County 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 County whose official act, while in County employment, directly resulted in the County's making this Agreement;

4) in accordance with Section 10-16-13 NMSA 1978, 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

5) in accordance with Section 10-16-3 and Section 10-16-13.3 NMSA 1978, 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 County.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the County relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the County 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 County and notwithstanding anything in the Agreement to the contrary, the County 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.**

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

**14. Merger.**

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

**15. Penalties for violation of law.**

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



(SAMPLE CONTRACT CONTINUED)

**16. Equal Opportunity Compliance.**

The Contractor agrees to abide by all federal, state and county laws and rules and regulations, pertaining to equal employment opportunity. In accordance with all such laws, 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.**

In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern and that venue will lie in the Sixth Judicial District Court in Grant County. 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 County.

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

**20. Disclaimer and Hold Harmless.**

Grant County shall not be liable to the Contractor, or the Contractor's successors, heirs, administrators, or assigns, for any loss, damage, or injury, whether to Contractor's person or property, occurring in connection with Contractor's performance of Contractor's duties according to this Agreement. Contractor shall hold the County harmless from all loss, damage, and injury, including court costs and attorney fees, incurred by the County in connection with the performance by Contractor of Contractor's duties according to this Agreement.

**21. Indemnification.**

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

**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. Authority.**

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

(SAMPLE CONTRACT CONTINUED)

25. **Lobbying.**

No federal appropriated funds can be paid or will be paid, by or on behalf of the CONTRACTOR, or any person for influencing or attempting to influence an officer or employee of any County, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, or the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any County, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection of this federal contract, grant, loan, or cooperative agreement, the CONTRACTOR shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

26. **Approval of Contractor Personnel.**

Personnel proposed in the Contractor's written proposal to the County are considered material to any work performed under this Agreement. No changes of personnel will be made by the Contractor without prior written consent of the procuring agency of the County. Replacement of any Contractor personnel, if approved, shall be with personnel of equal ability, experience and qualifications. The Contractor will be responsible for any expenses incurred in familiarizing the replacement personnel to insure their being productive to the project immediately upon receiving assignments. Approval of replacement personnel shall not be unreasonably withheld. The procuring agency of the County shall retain the right to request the removal of any of the Contractor's personnel at any time.

27. **Survival.**

The agreement paragraphs titled "Patent, Copyright, Trademark, and Trade Secret Indemnification" and "Indemnification" shall survive the expiration of this agreement. Software licenses, leases, maintenance and any other unexpired agreements that were entered into under the terms and conditions of this agreement shall survive this agreement

28. **Succession.**

This agreement shall extend to and be binding upon the successors and assigns of the parties.

29. **Force Majeure.**

A party shall be excused from performance under this agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

30. **Mediation.**

In the event a dispute arises as to the rights and obligations among the parties hereto, the parties agree to attempt to resolve the dispute through mediation as a condition precedent to seeking legal and equitable remedies. The parties agree to evenly split the costs of any such mediation services. The parties shall mutually agree upon the choice of mediator. In the event the parties have not agreed upon a mediator within twenty (20) days of written notice to the other regarding the dispute, then a list of seven potential mediators will be obtained from the New Mexico Association of Counties and the parties shall utilize a striking process until a mediator is agreed upon.

31. **Notice to Proceed.**

It is expressly understood that this Agreement is not binding upon the County until it is executed by the Board of County Commissioners after voting on the contract at a public meeting. Further, the Contractor is not to proceed with its obligations under the Agreement until the Contractor has received a fully signed copy of the Agreement.

32. **Attorney's Fees.**

In the event this Agreement results in dispute, mediation, litigation, or settlement between the parties to this Agreement, the prevailing party of such action shall NOT be entitled to an award of attorneys' fees and court costs.

33. **Cooperation.**

All parties hereto will fully cooperate with the other and their respective counsel, accountant, and agents in connection with any steps required to be taken under this Agreement.

34. **Patent, Copyright, Trademark and Trade Secret Indemnification.**

- A. The contractor shall defend, at its own expense, the County of Socorro against any claim that any product or service provided under this agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the County of Socorro based upon the contractor's trade secret infringement relating to any product or service

(SAMPLE CONTRACT CONTINUED)

provided under this agreement, the contractor agrees to reimburse the County of Socorro for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the County of Socorro shall:

- i. give the contractor prompt written notice of any claim;
- ii. allow the contractor to control the defense or settlement of the claim; and
- iii. cooperate with the contractor in a reasonable way to facilitate the defense or settlement of the claim.

B. If any product or service becomes, or in the contractor's opinion is likely to become the subject of a claim of infringement, the contractor shall at its option and expense:

- i. provide a procuring agency of the County the right to continue using the product or service;
- ii. replace or modify the product or service so that it becomes non-infringing; or
- iii. accept the return of the product or service and refund an amount equal to the depreciated value of the returned product or service, less the unpaid portion of the purchase price and any other amounts which are due to the contractor. The contractor's obligation will be void as to any product or service modified by the procuring agency of the County to the extent such modification is the cause of the claim.

**35. Professional Liability Insurance.**

Contractor agrees to maintain in full force throughout the duration of the Agreement a lawyers professional liability insurance policy with a minimum coverage of \$1,050,000.00 per occurrence/ \$2,000,000.00 aggregate.

**36. 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 County: Grant County, NM  
 Attn: Charlene Webb, Manager  
 P.O. Box 898  
 Silver City, NM 88062

To the Contractor: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the Board of County Commissioners below.**

**APPROVED, ADOPTED AND PASSED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2019

**BOARD OF GRANT COUNTY COMMISSIONERS**

\_\_\_\_\_  
Chris M. Ponce, District 1

\_\_\_\_\_  
Gerald W. Billings, Jr. District 4

\_\_\_\_\_  
Javier Salas, District 2

\_\_\_\_\_  
Harry Browne, District 5

\_\_\_\_\_  
Alicia Edwards, District 3

Attest: \_\_\_\_\_  
Marisa Castrillo, Clerk

**CONTRACTOR**

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name & Title

(END OF SAMPLE CONTRACT)

## SECTION 5 – REQUIRED FORMS

### FORMS INCLUDED IN THIS SOLICITATION DOCUMENT:

Appendix A – Notice to County of Intent to Propose

Appendix B – Cost Response Form

Appendix C – RFP Response Form

Appendix D – Offeror’s Reference Form

Appendix E – Resident Business/Resident Veterans Preference Certification Form

Appendix F – Campaign Contribution Disclosure Form

Appendix G – Certification of Offeror/Bidder Regarding Debarment

Certification Regarding Lobbying

Certification of Offeror/Bidder Regarding Tax Delinquency and Felony Convictions

Trade Restriction Certification

- Failure to complete and submit these forms with your Response may result in it being deemed non-responsive and rejected without further evaluation.
- Download solicitations, addenda and forms at [www.grantcountynm.com](http://www.grantcountynm.com)

*(Remainder of Page Intentionally Left Blank)*

*Appendix A*  
Grant County, NM  
RFP 19-06: Attorney & Legal Services  
**NOTICE TO COUNTY OF INTENT TO PROPOSE**

The undersigned agrees that he/she has received a complete copy of the RFP. Proposals will only be accepted from those Offerors who sign and return this form by the date and time listed herein. Only potential Offerors who elect to return this form completed with the intention of submitting a proposal will receive copies of all Offeror written questions and the Owner's written responses to those questions, as well as any RFP addenda that may be issued. Responses submitted without this form on file will be rejected as non-responsive.

This mandatory form must be returned on, or before, June 24, 2019 by 5:00 p.m. MST, to:

Randy J. Hernandez, Chief Procurement Officer  
Grant County Manager's Office  
1400 Highway 180 East, Silver City, New Mexico 88061  
Email: [rhernandez@grantcountynm.com](mailto:rhernandez@grantcountynm.com)  
Fax: 575-574-0073

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

**REPRESENTED BY:** \_\_\_\_\_  
*Printed Name & Title*

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

**CITY:** \_\_\_\_\_ **STATE:** \_\_\_\_\_ **ZIP:** \_\_\_\_\_

**TELEPHONE:** \_\_\_\_\_ **FAX:** \_\_\_\_\_

**E-MAIL:** \_\_\_\_\_

**ALTERNATE CONTACT PERSON:** *This alternate may be used for all correspondence related to the RFP if the Representative indicates herein.*

**NAME:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_

**TELEPHONE:** \_\_\_\_\_ **E-MAIL:** \_\_\_\_\_

---

**PLACE AN 'X' ON THE APPROPRIATE STATEMENT BELOW AND RETURN FORM TO THE PROCUREMENT MANAGER LISTED HEREIN:**

\_\_\_\_\_ Firm **DOES** intend to respond to this RFP    OR    \_\_\_\_\_ Firm **DOES NOT** intend to respond to this RFP

**Authorized Signature:** *Signature of person authorized to sign for your firm.*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

*Appendix B*  
Grant County, NM  
RFP 19-06: Attorney & Legal Services  
**COST RESPONSE FORM**

Offeror Name: \_\_\_\_\_

Total Proposed Annual Cost: \$ \_\_\_\_\_

- State Gross Receipts and Local Taxes (if any) shall not be include in your proposed annual cost.
- All taxes must be applied at time of invoicing.

**Authorized Signature:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name & Title

*Appendix C*  
**RFP RESPONSE FORM**

*Failure to complete this form shall result in your Response being deemed non-responsive and rejected without further evaluation.*

**TO: COUNTY OF GRANT**

The Undersigned hereby offers and agrees to furnish the goods and/or services in compliance with all terms, scope of work/services, conditions, specifications, and addenda in the Request for Proposals.

**ADDENDA:**

The undersigned has read, understands and is fully cognizant of the Information to Offerors, Offer and Form of Contract, all exhibits thereto, together with any written addendum issued in connection with any of the above. The undersigned hereby acknowledges receipt of the following addendum(s): \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, (write "none" if none). In addition, the undersigned has completely and appropriately filled out all required forms.

**OBLIGATION:**

The undersigned, by submission of this Offer, hereby agrees to be obligated, if selected as the Contractor, to provide the stated goods and/or services to the County, for the term as stated herein, and to enter into a Contract with the County, in accordance with the Conditions, Scope and Terms, as well as the Form of Contract, together with any written addendum as specified above.

**COMPLIANCE:**

The undersigned hereby accepts all administrative requirements of the RFP and will comply with such requirements. By submitting this Response Form, the Offeror represents that: 1) the Offeror is in compliance with any applicable ethics or anti-kickback provisions of the County's Purchasing Policy, and 2) if awarded a contract to operate the Concession or provide the Services required in the RFP, the Offeror will comply with the ethics and anti-kickback provisions of the Purchasing Policy.

**NON-COLLUSION:**

The undersigned, by submission of this Response Form, hereby declares that this Response is made without collusion with any other business making any other Response, or which otherwise would make a Response.

**PERFORMANCE GUARANTEE:**

The undersigned further agrees that if awarded the Agreement, it will submit to the County any required performance guarantee (i.e. performance and payment bond).

**SUBMITTAL REQUIREMENTS:**

The undersigned certifies it has attached a complete response to each of the submittal requirements listed in the Evaluation Criteria and Submittal Requirements section of this RFP.

**RFP RESPONSE FORM**

*No Response shall be accepted which has not been manually signed in ink in the appropriate space below:*

**I certify, under penalty of perjury, that I have the legal authorization to bind the firm hereunder:**

**For clarification of this offer, contact:**

\_\_\_\_\_  
Company Name

Name: \_\_\_\_\_

\_\_\_\_\_  
Address

Title: \_\_\_\_\_

\_\_\_\_\_  
City State Zip

Phone: \_\_\_\_\_

\_\_\_\_\_  
Signature of Person Authorized to Sign

Fax: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

Email: \_\_\_\_\_

\_\_\_\_\_  
Title

\_\_\_\_\_  
Federal Tax ID

Acknowledged before me by \_\_\_\_\_ (name) as \_\_\_\_\_ (title)

of \_\_\_\_\_ (company) this \_\_\_\_\_ (day) of \_\_\_\_\_, 20\_\_\_\_.

Notary Signature: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

(Seal)



*Appendix D*  
Grant County, NM  
RFP 19-06: Attorney & Legal Services

**OFFEROR'S REFERENCE FORM**

All references must be from customers/clients for whom your firm has completed work similar to the specifications of this RFP. Attach additional pages if necessary.

References for: \_\_\_\_\_

*Offeror's Name*

**Reference No. 1:** \_\_\_\_\_

Address: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Describe the type of legal services provided: \_\_\_\_\_

\_\_\_\_\_

**Reference No. 2:** \_\_\_\_\_

Address: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Describe the type of legal services provided: \_\_\_\_\_

\_\_\_\_\_

**Reference No. 3:** \_\_\_\_\_

Address: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Describe the type of legal services provided: \_\_\_\_\_

\_\_\_\_\_

*Appendix E*  
Grant County, NM  
RFP 19-06: Attorney & Legal Services

**RESIDENT BUSINESS/VETERAN BUSINESS PREFERENCE CERTIFICATION**

Offeror's Name: \_\_\_\_\_ hereby certifies the following concerning application of the Resident Business or Resident Veterans Business Preference to this RFP as described in sections 13-1-21 thru 13-1-22 NMSA 1978.

**Resident Business/Veteran Business Certificate No:** \_\_\_\_\_

\_\_\_\_\_ I declare that my firm is eligible to receive the **New Mexico Resident Business Preference** of five percent (5%), equivalent to fifty (50) points, towards my proposal evaluation.

OR

\_\_\_\_\_ I declare that my firm is eligible to receive the **New Mexico Resident Veterans Business Preference** of ten percent (10%), equivalent to one hundred (100) points, towards my proposal evaluation.

**Certification:**

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's Division of the General Services Department the awarded amount involved. I will indicate in the report the awarded 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.

**Authorized Signature:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name & Title

*Appendix F*

**CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person seeking to enter into a contract with any state agency or local public body for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract.

The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

**THIS FORM 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 either 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 Page 2 of 3 DFA Disclosure form/April, 2006 unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“Family member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

“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.

“Person” means any corporation, partnership, individual, joint venture, association or any other private legal entity.

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

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

**CAMPAIGN CONTRIBUTION DISCLOSURE OF CONTRIBUTIONS**

Board of Grant County Commissioners:

*Chris M. Ponce, District 1*  
*Javier Salas, District 2*  
*Alicia Edwards, District 3*

*Gerald W. Billings, Jr., District 4*  
*Harry Browne, District 5*

Contribution made by: \_\_\_\_\_

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

Name of Applicable Public Official: \_\_\_\_\_

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

Amount(s) of Contributions(s) \_\_\_\_\_

Nature of Contributions (s) \_\_\_\_\_

Purpose of Contributions(s) \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name & Title

**OR**

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name & Title

## CERTIFICATION OF OFFERER/BIDDER REGARDING DEBARMENT

By submitting a proposal under this solicitation, the bidder or offeror certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

### CERTIFICATION REGARDING LOBBYING

The Bidder or Offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

### CERTIFICATION OF OFFERER/BIDDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS

The applicant must complete the following two certification statements. The applicant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark () in the space following the applicable response. The applicant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

#### Certifications

1. The applicant represents that it is (  ) is not (  ) a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
2. The applicant represents that it is (  ) is not (  ) is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

#### Note

If an applicant responds in the affirmative to either of the above representations, the applicant is ineligible to receive an award unless the sponsor has received notification from the agency suspension and debarment official (SDO) that the SDO has considered suspension or debarment and determined that further action is not required to protect the Government's interests. The applicant therefore must provide information to the owner about its tax liability or conviction to the Owner, who will then notify the FAA Airports District Office, which will then notify the agency's SDO to facilitate completion of the required considerations before award decisions are made.

## Term Definitions

**Felony conviction:** Felony conviction means a conviction within the preceding twenty-four (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. § 3559.

**Tax Delinquency:** A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

## TRADE RESTRICTION CERTIFICATION

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror –

1. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR);
2. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and
3. has not entered into any subcontract for any product to be used on the Federal project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18 USC Section 1001.

The Offeror/Contractor must provide immediate written notice to the Owner if the Offeror/Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to an Offeror or subcontractor:

1. who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR; or
2. whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list; or
3. who incorporates in the public works project any product of a foreign country on such USTR list.

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

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The Contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the Offeror has knowledge that the certification is erroneous.

*Appendix G (Cont'd)*

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration (FAA) may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

Company Name: \_\_\_\_\_

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

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

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