

**STATE OF NEW MEXICO
STATE ENGINEER'S OFFICE
AND INTERSTATE STREAM COMMISSION**

**WATER ADMINISTRATION TECHNICAL ENGINEERING RESOURCE SYSTEM
ABSTRACT/IMAGING PORTION**

**REQUEST FOR PROPOSALS FOR
PROFESSIONAL SERVICES TO
ABSTRACT WATER RIGHTS FILES,
INPUT DATA INTO "WATERS DATABASE,
PERFORM QUALITY CONTROL AND ERROR
CORRECTION ON DATA ENTERED, AND TRAIN
AGENCY PERSONNEL**

PROPOSAL DEADLINE:

August 17, 2005

PROCUREMENT MANAGER:

Richard M. DeSimone

Water Resource Allocation Program

121 Tijeras, N.E. Suite 2000

Albuquerque, NM 87102

Phone: (505) 764-3872

Fax: (505) 764-3891

E-mail: rdesimone@ose.state.nm.us

**NOTICE
(As Published)**

The New Mexico State Engineer Office/Interstate Stream Commission (the “Agency”) requests proposals under RFP No.2006-004 for the services of one or more contractors to provide the following functions related to populating its Water Administration Technical Engineering Resource System (“ WATERS”) database: abstract water rights files; input abstracted data into the database; perform quality control and error correction functions relating to documents abstracted, data input, and data already populating the database; resolve problems related to the use and function of the database; develop documentation and training materials for abstracting water rights files, data entry, quality control and error correction; and, train Agency employees in all of the above described functions.

Proposals may be submitted to the Office of the State Engineer, Attention: Richard M. DeSimone. If mailed, address to 121 Tijeras Blvd, Suite 2000, Albuquerque, NM 87102. If hand delivered, address to same. Proposals must be received no later than **2:00 p.m. Mountain Time, August 17, 2005**. Copies of the RFP can be obtained in person at the Agency offices in Albuquerque and Santa Fe and may also be accessed through the OSE/ISC web site at: <http://www.ose.state.nm.us/>.

THIS RFP MAY BE CANCELED AND ANY AND ALL PROPOSALS MAY BE REJECTED IN WHOLE OR IN PART WHEN IT IS IN THE BEST INTERESTS OF THE STATE OF NEW MEXICO AND THE AGENCY.

I. INTRODUCTION

A. Purpose of this Request for Proposals. The Agency wishes to obtain the services of one or more contractors with the necessary experience and knowledge to perform the tasks outlined in the Scope of Work necessary to support populating the Water Administration Technical Engineering Resource System (“WATERS”) database. In accordance with NMSA 1978, Section 13-1-153 a multiple source award may be made when awards to two or more offerors are necessary for adequate delivery or service.

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Qualified individuals are encouraged to apply. The Agency reserves the right to divide the work in any manner it deems appropriate or advisable if a multiple source award is made pursuant to this RFP. The Agency scheduling of tasks and funding may not allow implementation of all tasks described in this RFP. Maximum costs associated with all awards under this RFP will not exceed \$200,000.

B. Scope of Work.

(1) *Generally.* Professional services to be provided pursuant to this Contract (the “Scope of Work”) may include the following: (1) abstract water rights files and enter them into the WATERS database; (2) train Agency employees with respect to entering water rights file information into the WATERS database, (3) train Agency employees with respect to maintaining the WATERS database by entering new applications and actions, (4) perform Quality Assurance by assisting Agency employees in correcting erroneous database entries as they are identified, (5) train Agency employees in the use of the metering module of WATERS database, (6) assist customers in doing searches on WATERS, (7) train the Agency staff in the proper use of WATERS, (8) develop documentation and training materials for abstracting water rights files, data entry, quality control and error correction, and (9) serve as an advisor to the Project Manager on continuous quality improvement efforts in line with the Agency’s Strategic and other related WATERS Plans.

(2) *Contract Manager, Assignment of Work Deliverables; Status Reports.* The Contract Manager will assign tasks, coordinate all communications between Contractor and the Agency related to the tasks assigned, and recommend approval or rejection of deliverables and invoices. Contractor shall consult with the Contract Manager concerning progress on assigned tasks and all issues related thereto. Tasks may be assigned, modified, or withdrawn at the discretion of the Contract Manager. Deliverables will be specified by the Contract Manager or as otherwise described in the Scope of Work. When requested by the Contract Manager, Contractor will provide the Agency with status reports in a format and as such times as directed.

(3) *Performance Measures.* Performance measures for the tasks assigned to the Contractor under this agreement are (i) prompt response to assigned tasks and requests for information and status reports, (ii) completion of assigned tasks and submission of deliverables and status reports within

scheduled time frames (iii) assigned tasks deliverables, status reports prepared and completed in an efficient and cost effective manner.

A contract manager for the Agency will assign work. Individual work projects will be assigned with identified deliverables and a time schedule. The quantity of services or level of effort required under contract(s) awarded pursuant to this RFP can, and likely will, vary with the progress of the work, as determined by the Agency. The contractor(s) will be required to work effectively and cooperatively with personnel at all levels and with a variety of backgrounds, including other contractors, information technology specialists, attorneys, engineers, administrative staff and clerical support staff.

The contractor(s) will be solely and wholly responsible for performing and completing assignments to the satisfaction of the Agency. All work shall be performed in accordance with the highest professional standards and completed within the time frame for performance mutually agreed upon between the Agency and the contractor.

The Agency reserves the right to retain other contractors to provide similar services or to complete a particular assignment or task, as may be necessary or desirable. The Agency reserves the right to divide the work in any manner it deems appropriate or advisable if a multiple source award is made pursuant to this RFP. Funding may not allow the implementation of all tasks described in this RFP.

C. Contracts. The duration of contracts awarded pursuant to this RFP, including all renewals thereof, shall not exceed a total of four (4) years. Contracts awarded pursuant to this RFP shall be in the form attached hereto as Appendix A, except as may be modified in accordance with the procedures described in this RFP. Offerors responding to this RFP must affirmatively state that they agree to enter into the form of contract attached to this RFP or state any exceptions.

D. Procurement Manager. The Agency has designated a Procurement Manager who is responsible for the conduct of this procurement whose name, address, and telephone number is listed below.

Richard M. DeSimone, Procurement Manager
Office of the State Engineer/Interstate Stream Commission
121 Tijeras Blvd, Suite 2000
Albuquerque, NM 87102
Phone: (505) 764-3872 Fax: (505) 764-3891
E-mail: rdesimone@ose.state.nm.us

Any inquiries or requests regarding this procurement must be submitted to the Procurement Manager in writing. Offerors may contact ONLY the Procurement Manager regarding the procurement. Other state employees do not have the authority to respond on behalf of the Agency.

II. CONDITIONS GOVERNING THE PROCUREMENT

A. Sequence of Events. The Agency will make reasonable efforts to adhere to the schedule outlined below.

<u>Activity</u>	<u>Responsibility</u>	<u>Date</u>
1. Issue of RFP	Agency	08/04/2005
2. Acknowledgment of Receipt/ Distribution List Response	Potential Offerors	08/09/2005
3. Deadline to Submit Additional Written Questions	Potential Offerors	08/11/2005
4. Response to Written Questions/RFP Amendments	Agency	08/12/2005
5. Submission of Proposal to Agency	Offerors	08/17/2005
6. Proposal Evaluation	Evaluation Committee	08/17/2005 through 08/24/2005
7. Selection of Finalists	Evaluation Committee	08/25/2005
8. Finalists Interviews (Optional)	Evaluation Committee	Scheduled as necessary
9. Best and Final Offers from Finalists	Evaluation Committee	08/29/2005
10. Agency Approval of Finalists	Agency	To be determined
11. Contract Finalization	Agency, Offeror(s)	To be determined
12. Contract Award	Agency	Sept 2005
13. Protest Deadline	Offeror	15 days after contract award

DATES SET FORTH ABOVE ARE SUBJECT TO EXTENSION OR REVISION AS NECESSARY IN THE INTEREST OF THE AGENCY.

B. Explanation of Events.

1. *Issue RFP*. This RFP is being issued by the Agency. Additional copies of this RFP can be obtained from the Procurement Manager.

2. *Acknowledgment of Receipt/Distribution List Response*. A potential offeror that wishes to have its name placed on the procurement distribution list must return to the Procurement Manager by hand delivery, facsimile, or certified mail the "Acknowledgement of Receipt of Request for Proposals Form" attached as Appendix B. The procurement distribution list will be used to distribute written responses to questions and RFP amendments, if any, and

other correspondence relating to this RFP. A potential offeror who fails to return this form will not appear on the procurement distribution list and that potential offeror will not receive written responses to questions, RFP amendments, or other correspondence or notices relating to this RFP.

3. *Deadline to Submit Additional Written Questions.* Potential offerors may submit additional written questions as to the intent or clarity of this RFP until the close of business on the Deadline to Submit Additional Written Questions specified above. All written questions must be addressed to the Procurement Manager.

4. *Response to Written Questions/RFP Amendments.* Written responses to written questions and any RFP amendments will be distributed to each potential offeror whose name appears on the procurement distribution list.

5. *Submission of Proposal to Agency.* The Procurement Manager or the Procurement Manager's designee must receive five complete copies of proposals for review and evaluation no later than 2 p.m., on August 17, 2005 the deadline for Submission of Proposals to Agency set forth above. Proposals received after the deadline will not be accepted. Proposals must be addressed and delivered to the Procurement Manager at the address given above and labeled on the outside of a sealed package to clearly indicate that they are in response to this RFP. Proposals submitted by facsimile will not be accepted.

The date and time of receipt will be recorded on each proposal. A public log will be kept of the names of all offerors that timely submitted a proposal. Pursuant to NMSA 1978, Section 13-1-116 the contents of any proposal will not be disclosed to competing offerors during the evaluation and negotiation process.

6. *Proposal Evaluation.* An evaluation committee appointed by the Agency (the "Evaluation Committee") will perform the evaluation of proposals. During the evaluation period, the Procurement Manager may, but shall not be required to, initiate discussions with one or more offerors for the purpose of clarifying aspects of the proposals. Offerors may not initiate discussions.

7. *Selection of Finalists.* The Evaluation Committee will select, and the Procurement Manager will notify, the finalist(s). Only finalists will be invited to participate in the subsequent steps of the procurement. The schedule for the oral presentations, if any, will be determined at that time.

8. *Best and Final Offers from Finalists.* Finalists may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers. Best and final offers may be clarified, in writing, at a finalist's oral presentation.

9. *Contract Finalization.* A contract will be finalized with the most advantageous offeror(s). In the event that mutually agreeable terms cannot be reached within the time specified, the Agency reserves the right to undertake contract negotiations with other offeror(s) without undertaking a new procurement process.

10. *Contract Award.* The contract(s) shall be awarded to the offeror(s) whose proposal(s) is (are) most advantageous, taking into consideration the evaluation factors set forth in this RFP. The contract award is subject to appropriate State of New Mexico approvals. The date of award specified above is subject to change at the discretion of the Agency.

11. *Protest Deadline.* Any protest by an offeror must be in conformance with NMSA 1978, Section 13-1-172 and applicable procurement regulations. The 15-day protest period shall begin on the day following the contract award. A protest must be written and must include the name and address of the protestor, identify the RFP by name and number, contain a statement of grounds for protest, include appropriate supporting exhibits, and specify the ruling requested. The protest must be addressed and delivered to the Procurement Manager. Protests received after the statutory deadline will not be accepted.

C. General Requirements. This procurement will be conducted in accordance with the applicable procurement code regulations.

1. *Acceptance of RFP Requirements.* Submission of a proposal constitutes acceptance of the Conditions Governing the Procurement and the Evaluation Factors contained in this RFP.

2. *Agency Right; Change in Contractor Representative(s).* The Agency reserves the right to accept all or a portion of an offeror's proposal. The Agency reserves the right to request a change in the offeror's, or if selected, the contractor's representative(s) if the assigned representative(s) is (are) not, in the sole opinion of the Agency, meeting its needs adequately.

3. *Costs.* Any cost incurred by the offeror in preparation, transmittal, or presentation of any proposal or material submitted in response to this RFP shall be borne solely by the offeror.

5. *Contractor Responsibility.* Any contract that may result from this RFP shall specify that the contractor is solely responsible for fulfillment of the contract with the Agency. The Agency will make contract payments only to the contractor, and not to any subcontractor or other party actually performing the services, or to any assignee.

6. *Subcontractors.* Use of subcontractors must be clearly explained in the proposal and major subcontractors must be identified by name. The contractor shall be wholly responsible for the entire performance regardless of whether subcontractors are used.

7. *Basis for Proposal; Amended Proposals.* Only information supplied by the Agency in writing through the Procurement Manager or in this RFP should be used as the basis for the preparation of proposals. An offeror may submit an amended proposal before the deadline for receipt of proposals. An amended proposal must completely replace a previously submitted proposal and must be clearly identified as an amended proposal in the transmittal letter. Agency staff will not merge, collate, or assemble proposal materials.

8. *Withdrawal.* An offeror may withdraw its proposal at any time prior to the deadline for receipt of proposals. The offeror must submit a written withdrawal request signed by the offeror's duly authorized representative addressed to the Procurement Manager. The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by applicable procurement regulations.

9. *Proposal Offer Firm.* Responses to this RFP, including proposal cost information, will be considered firm for ninety (90) days after the due date for receipt of proposals or sixty (60) days after receipt of a best and final offer if one is submitted.

10. *Disclosure of Proposal Contents.* The proposals will be kept confidential until a contract is awarded. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for the material that is proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the offeror has stamped or imprinted "proprietary" or "confidential," subject to the following requirements: Proprietary or confidential data shall be readily separable from the proposal to facilitate eventual public inspection of the non-confidential portion of the proposal; confidential data is normally restricted to financial information concerning the offeror's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, NMSA 1978, Sections 57-3A-1 to 57-3A-7; the price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information; proposals that simply label the entire proposal as proprietary or confidential shall be disregarded. If a request is received for disclosure of data for which an offeror has made a written request for confidentiality, the Agency shall examine the offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the offeror takes legal action to prevent the disclosure, the proposal will be disclosed. The proposal will be open to public inspection, subject to any continuing prohibition on the disclosure of confidential data.

11. *No Obligation.* This RFP in no manner obligates the State of New Mexico or any of its agencies to the eventual rental, lease, purchase, or other acquisition or use of any equipment, software, or services offered unless and until a valid written contract is fully executed and approved by the appropriate authorities.

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

13. *Sufficient Appropriation.* Any contract awarded as a result of this RFP may be terminated if sufficient appropriations or authorizations do not exist. The contractor shall accept as final the Agency's decision whether sufficient appropriations and authorizations are available.

14. *Governing Law.* This RFP and any contract that may result shall be governed by the laws of the State of New Mexico, without giving effect to its choice of law provisions, and venue for resolution of any dispute relating this RFP or any contract that may result shall be the First District Court in Santa Fe County, New Mexico.

15. *Contract Terms and Conditions.* The contract will follow the format specified by the Agency and shall be in substantially the form, and contain the terms and conditions, set forth in Appendix A. Submission of a proposal constitutes acceptance of the form of contract unless any exceptions to the form of contract are specifically stated in the proposal. The Agency reserves the right, however, to negotiate with the selected offeror provisions in addition to those contained in the RFP and Appendix A. Should an offeror object to any of the Agency's terms and conditions contained in the contract, such offeror must propose specific alternative language that would be acceptable to the Agency. General references to the offeror's terms and conditions or attempts at complete substitutions are not acceptable to the Agency and will result in disqualification of the offeror's proposal.

All contracts for professional services are subject to the review and approval of the New Mexico Department of Finance and Administration ("DFA") pursuant to NMSA 1978, Section 13-1-118 and NMAC 2.40.2. Pursuant to NMSA 1978, Section 13-1-118 and NMAC 2.40.2, all professional service agreements for an aggregate amount of more than \$200,000 must be reviewed and approved by the Attorney General.

16. *Offeror Qualifications.* The Evaluation Committee may make such investigations as necessary to determine the ability of the offeror to adhere to the requirements of, and perform the services specified in, this RFP. The Procurement Manager will reject the proposal of any offeror who is not a responsible offeror or fails to submit a responsive offer as defined in NMSA 1978, Sections 13-1-83 and 13-1-85.

17. *Right to Waive Minor Irregularities.* The Evaluation Committee reserves the right to waive minor irregularities, and to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

18. *Notice regarding violations of the Procurement Code and New Mexico Criminal Statutes.* The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, imposes civil and misdemeanor criminal penalties for its violation. In addition New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kick-backs.

19. *Release of Information.* Throughout the duration of this procurement process and contract term, potential offerors, offerors, and contractors must secure from the Agency written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement or the subsequent contract. Failure to adhere to this requirement may result in disqualification of the offeror's proposal or termination of the contract.

19. *Ownership of Documents.* All materials and documents submitted in response to this RFP shall become the property of the Agency and the State of New Mexico.

III. MINIMUM QUALIFICATIONS AND REQUIREMENTS

A. Qualifications. The offeror, or a principal member(s) of their staff or team, must have the following minimum qualifications:

1. If applicable under New Mexico state law, offeror must be qualified to do business in New Mexico and be in good standing with the New Mexico Public Regulation Commission prior to receiving a contract award.

2. Offeror must have knowledge of the WATERS project and be able to perform all the tasks listed in the Scope of Work without benefit of training or orientation by Agency personnel.

3. The offeror must agree to bill the Agency for professional services in billing units of 0.5 hours.

4. Contractors must provide insurance as required by the contract. A description of the offeror's insurance policies is required with the proposal submission, and proof of such insurance is required prior to entering into a contract. The Agency retains the right to reject contractor's insurance carrier and to request that such insurance be provided through an alternate carrier.

5. The 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 Agency. The proposal submission must include a description of any conflicts of interest the offeror or any individual associated with the offeror may have if awarded a contract and an explanation of how the offeror proposes to address these conflicts.

B. Rejection. Failure to address or satisfy each of the above requirements may result in rejection of the proposal.

IV. FORM OF PROPOSALS

Proposals must, at a minimum, contain the following information organized into the following sections:

A. Transmittal Letter. The letter must include the following: name, address, phone number, fax, and e-mail address for the offeror. The letter must have the original signature of the offeror or an officer or employee having the authority to bind the offeror together with the specific representation and warranty of such authority.

B. Table of Contents.

C. Organizational Experience. This section must describe the experience of the offeror's business entity related to the scope of work of this RFP. The Agency retains the right to request the submission of additional information to demonstrate the offeror's relevant experience.

D. Personnel Experience/Knowledge. This section must identify the professional personnel who will be performing the work under this RFP. For all such individuals, Offers must describe their experience relevant to the Scope of Work of this RFP and submit detailed résumés or curriculum vitae. Only professionals that the Agency approves in advance will be permitted to work on or bill for work on an assigned matter.

E. Work Product Example(s). Work product example(s), prepared by the personnel identified in Paragraph D above and clearly relevant to the scope of work of this RFP, should be included. The Evaluation Committee will evaluate no more than three work product examples.

F. Corporate References. The offeror must provide three (3) references from clients external to the Agency who received services similar to those described in the scope of work for this RFP. Any, all, or additional external references may be contacted to obtain and/or verify information. The minimum information that must be provided about each reference is: (1) name of individual or company for which services were provided; (2) address of individual or company; (3) name of contact person; (4) telephone number of contact person; and (5) description of services provided and dates services were provided.

G. Cost. Offerors must provide an offer consisting of a fixed hourly rate for services provided, which includes fringe benefits and any overhead costs. This hourly rate will be used for comparing offers and for selecting best offers. Individual hourly rates will be negotiated during contract finalization. The proposal should contain a statement that the rates quoted in the proposal are less than or equal to the firm's lowest rate for most-favored regular clients and or an explanation as to why they are not. The proposal should also include a description of the offeror's billing structure for Agency matters, specifying hourly rates. If travel is required during the performance of the contract, travel expenses will be paid at the standard State of New Mexico rates. Pre-approved out-of-pocket expenses, including airfare, will be reimbursed. Travel time must be billed at no more than half the individual hourly rate.

V. EVALUATION

A. Evaluation Process. All proposals will be reviewed for compliance with the mandatory requirements stated in this RFP. Proposals found to be non-responsive will be eliminated from further consideration. Responsive proposals will be evaluated on the factors that have been assigned a point value. The responsible offeror(s) whose proposal is most advantageous to the Agency will be recommended for contract award. A proposal will be considered the "most advantageous" if the Agency, in its sole discretion, believes the proposal will best meet the Agency's current and long term needs. The most advantageous proposal(s) may or may not have received the most points. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

B. Evaluation Point Summary. The following is a summary of evaluation factors and the point values available under each factor.

<u>Factor</u>	<u>Points Available</u>
1. WATERS experience, familiarity with the WATERS project to include OSE water right files and/or other related experience/education.	250
2. Work Product Examples	100
3. References	75
4. Cost	75

C. Evaluation Factors.

1. Education and prior experience performing the types of work identified under the Scope of Work. Points will be awarded for education and experience related to the Scope of Work.

2. Work Product Samples. Points will be awarded for examples of the offeror's prior work product similar to what will be expected under the Scope of Work.

3. References. Points will be awarded based on the strength of the references and their relevance to the Scope of Work.

4. Cost. The offeror must propose a fully-loaded hourly rate that includes fringe benefits and any overhead costs.

The Agency reserves the right to reject all of the offers if the Agency, at its sole discretion, determines that none of the offers will meet the current and/or long term needs of the Agency. None of the evaluation factors, including the cost factor, is outcome determinative.

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is entered by and between the Office of the State Engineer, an agency of the State of New Mexico, ("Agency") and _____, an individual ("Contractor") effective as of the date shown below that it is approved by the New Mexico Department of Finance and Administration ("DFA").

RECITALS

THE PARTIES enter this Agreement on the basis of the following recitals:

A. The Agency desires to obtain the services of Contractor to (*insert short description of services*).

B. Contractor has represented and warranted to the Agency that Contractor has possesses the necessary skills to provide such services and is willing to do so pursuant to the terms of this Agreement.

AGREEMENT

In consideration of the foregoing recitals and the covenants and promises contained herein the parties agree as follows:

1. Term. This Agreement shall begin on the date it is approved by DFA and expire _____, unless extended by amendment or terminated. The services Contractor is to provide, however, shall not commence until Contractor has (i) complied with the insurance requirements of this Agreement (ii) received a fully executed copy of this Agreement, and (iii) received specific instructions and an assignment from the "Contract Manager" designated by the Agency.

2. Scope of Work.

(a) *Generally*. Professional services to be provided pursuant to this Agreement ("Scope of Work") include (*insert detailed description of services*).

(b) *Contract Manager; Assignment of Work; Deliverables; Status Reports*. The Contract Manager will assign tasks, coordinate all communications between Contractor and the Agency related to the tasks assigned, and recommend approval or rejection of deliverables and invoices. Contractor shall consult with the Contract Manager concerning progress on assigned tasks and all issues related thereto. Tasks may be assigned, modified, or withdrawn in the discretion of the Contract Manager. Deliverables will be as specified by the Contract Manager or as otherwise described in the Scope of Work. When requested by the Contract Manager, Contractor will provide the Agency with status reports in a format and at such times as directed.

(c) *Performance Measures*. Performance measures for the tasks assigned to the Contractor under this Agreement are (i) prompt response to assigned tasks and requests for

information and status reports, (ii) completion of assigned tasks and submission of deliverables and status reports within scheduled time frames (iii) assigned tasks, deliverables, and status reports completed in a manner and format reflecting a high quality of legal work and acceptable to the Contract Manager in all respects, and (iv) assigned tasks, deliverable, and status reports prepared and completed in an efficient and cost effective manner. ***(Modify Performance Measures as necessary to accurately reflect the Scope of Work).***

3. Compensation and Payment.

(a) *Cost Limitation.* The total amount payable by the Agency under this Agreement shall not exceed _____ Dollars (\$_____) ("Cost Limitation Amount"). The Cost Limitation Amount is a maximum and not a guarantee that the Contract Manager will assign Contractor any tasks or that the work to be performed shall equal the Cost Limitation Amount. Contractor shall be paid based upon ***(specify basis for payment, e.g. hourly, lump sum, etc.; if hourly use the following: the hourly rate of _____ per hour (\$_____/hour) ("Hourly Rate") for the time reasonably spent on assigned tasks. Contractor shall not be separately paid nor reimbursed for gross receipts tax. (Modify Cost Limitation to reflect Scope of Work, basis of payment, etc.)***

Contractor is responsible for not billing in excess of the lesser of the Cost Limitation Amount or the presently Encumbered Amount and for verifying the Encumbered Amount with the Contract Manager. Contractor will not be compensated or reimbursed for work performed or expenses incurred in excess of the lesser of the Cost Limitation Amount or the Encumbered Amount.

(b) *Travel and Expense Reimbursement.* The Contract Manager must approve all expenses in writing and in advance or Contractor shall not be reimbursed for such expenses. For approved travel the Agency shall pay travel expenses at the rates established in the New Mexico Per Diem and Mileage Act, NMSA 1978, Sections 10-8-1, et seq. as implemented by the current DFA rule and the current Agency travel policy. All expenses must be documented to the Agency's satisfaction and invoiced for reimbursement. ***(Modify to limit expenses if necessary or to include additional limitations)***

(c) *Invoices.* Contractor shall submit signed invoices monthly to the Contract Manager which contain the contract number and a calculation of the payment due based upon the Hourly Rate supported by a time sheet reflecting dates, tasks, and hours billed (at tenth of an hour increments) ***(if an Hourly Rate will not be used, modify the preceding language to reflect the basis for billing and invoicing, e.g. lump sum or some other basis)***. Contractor shall not be entitled to receive any payment not invoiced and supported by appropriate documentation. Payment of the amount invoiced, or any part thereof, shall not relieve the Contractor of any unperformed obligations or foreclose the Agency's right to recover incorrect, excessive, or illegal payments. ***(Modify to include additional invoicing requirements as needed)***

(d) *Exception to Invoices.* If the Agency finds the services performed or the deliverables provided pursuant to this Agreement unacceptable, within thirty (30) days of receipt of Contractor's invoice for such services the Agency will provide Contractor a letter of exception explaining the deficiency along with details of how Contractor may remediate the deficiency.

(e) *Property.* Contractor shall not be reimbursed for any property or equipment that Contractor might acquire during performance under this Agreement. If this Agreement is amended to provide for reimbursement for property or equipment acquired, Contractor shall report such acquisition to the Agency within fifteen (15) days of acquisition, such property or equipment shall be the property of the Agency and shall be delivered to the Agency upon this Agreement's expiration or termination. (*Modify as needed for property acquisition*)

(f) *Mistake in Compensation.* Contractor shall reimburse the Agency for amounts paid to Contractor in error within thirty (30) days of written notice of such error. Contractor shall promptly notify the Agency if Contractor independently becomes aware of such an error. Interest shall accrue at the statutory rate upon any amounts not reimbursed to the Agency after the thirtieth (30th) day following the earlier of the date of such notice to Contractor or the date Contractor otherwise becomes aware of such error.

(g) *Appropriations.* This Agreement's terms are contingent upon the New Mexico State Legislature granting sufficient appropriations and authorization. If sufficient appropriations and authorization are not granted, or if funds are not encumbered even if appropriated, the Agency in its sole and absolute discretion may: (i) modify the Scope of Work; (ii) terminate this Agreement; or, (iii) suspend performance until such time as sufficient funds become available, however, any such suspension shall not by itself extend this Agreement's term. The Agency's decision whether sufficient funds are available shall be final, binding, and accepted by Contractor. Contractor shall not be entitled to compensation or damages from the Agency due to the delay, modification, or cancellation of performance under this Agreement.

4. Termination.

(a) *Events of Termination.* This Agreement may be terminated as follows:

(i) At any time by written agreement of the Agency and Contractor.

(ii) By the Agency for any reason upon thirty (30) days written notice.

(iii) By the Agency for cause upon Contractor's failure to materially comply with the terms of this Agreement. The Agency will give Contractor written notice specifying Contractor's failure to comply. Within five (5) days of receipt of such notice, Contractor shall correct the failure (or, if such failure cannot reasonably be corrected in such five (5) day period, Contractor shall begin in good faith to correct the failure and proceed diligently to complete such correction). If within five (5) days Contractor has not completed corrective action (or initiated corrective action, as the case may be) to the Agency's satisfaction, the Agency may deliver written notice terminating this Agreement as of the date of such notice.

(iv) By the Agency at any time if required by changes in state or federal law, because of court order, or because of insufficient funds appropriated, authorized, or encumbered. If the event of termination pursuant to this subsection, the Agency will attempt to provide Contractor thirty (30) day written notice prior to the effective date of the termination.

(b) *Contractor Obligations.* Immediately upon termination of this Agreement, or receipt of the Agency's notice intent to terminate, Contractor shall:

(i) Incur no further financial obligations under this Agreement without the Agency's prior written approval.

(ii) Cease all work to the extent specified in the notice of termination, except as the Agency may direct for orderly completion and transition.

(iii) Take such action as the Agency may direct or as may be reasonably necessary to protect and preserve all property and records related to by this Agreement.

(iv) Cooperate fully in the completion or transition of any assigned tasks so as to permit continuity in the administration of Agency programs and cases.

(c) *Costs of Termination.* Upon termination of this Agreement, the Agency shall pay Contractor all amounts due for services completed before the effective date of such termination. The Agency shall not be responsible for any costs arising out of such termination and may deduct from amounts otherwise due to Contractor amounts determined by the Agency to be due to it from Contractor.

(d) *No Nullification.* By terminating this Agreement, neither party may nullify obligations incurred before the date of notice or required to be provided through the effective date of termination.

(e) *Contractor Termination.* Should Contractor terminate this Agreement without the Agency's consent, Contractor shall reimburse the Agency for all costs arising from delays, hiring or training a new contractor (at potentially higher rates), repetition or revision of completed work if necessary, and all other direct and indirect expenses the Agency incurs as a result of such termination.

5. Transfer of Files. Upon expiration or termination of this Agreement, Contractor shall assist and cooperate with the Agency in the orderly and timely transfer of files, documents, memoranda, notes, data, and related materials (whether provided by the Agency to Contractor or created by Contractor pursuant to this Agreement) to the Agency.

6. Disputes. Contractor and Contract Manager will attempt to informally resolve any disputes that may relate to this Agreement. Contractor, acting through the Contract Manager, shall report in writing any dispute not so resolved to the Director of the Agency within thirty (30) days of Contractor's knowledge of the circumstances giving rise to the dispute. The Director's written decision shall be delivered to the parties within fifteen (15) days of receipt of the written dispute and shall be final and conclusive unless, within thirty (30) days from the date of the decision, Contractor seeks appropriate legal relief. Failure to use the above procedure in a timely manner or to file a timely appeal either to the Director or from the Director's decision shall be deemed acceptance of the decision to date and waiver of any further claim or remedy.

7. Status of Contractor.

(a) *Independent Contractor; Costs of Business.* Contractor is an independent contractor providing services for the Agency and is not an employee of the State of New Mexico.

As a result of this Agreement, Contractor shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico. Contractor shall be solely responsible for all applicable taxes (including gross receipts taxes), insurance expenses, licensing fees, and costs of doing business (other than reimbursable expenses specifically provided for herein, if any).

(b) *Authority of Contractor.* Contractor shall not purport to bind the State of New Mexico, its officers or employees, to any obligation not expressly authorized herein. Without the Agency's express written permission, Contractor shall not in any manner reference the Agency in such a way that states or implies the Agency's endorsement of Contractor or Contractor's work. Contractor may use the Agency as a reference.

(c) *Other Contractors.* The Agency may for any reason enter into other agreements for services related or identical to the services contemplated by this Agreement, whether or not this Agreement has expired or been terminated. Contractor shall fully cooperate with the Agency and its other contractors.

(d) *Subcontracting.* Contractor is solely responsible for fulfilling this Agreement and shall not subcontract any portion of the services to be provided hereunder without the Agency's prior written consent, which may be conditioned on the Agency's approval of the proposed subcontractor or subcontract or withheld in the Agency's sole and absolute discretion.

7. Release. By accepting payment of the amounts due under this Agreement, Contractor releases the State of New Mexico, its officers and employees, from all liabilities and obligations whatsoever related to this Agreement or the services provided hereunder. Payment to Contractor by the Agency shall not, however, constitute final release of Contractor. Should audit or inspection of Contractor's records subsequently reveal outstanding Contractor obligations, Contractor shall remain liable to the Agency for such obligations. Any payments by the Agency to Contractor will be subject to any appropriate recoupment by the Agency.

9. Records and Audit. During the term of this Agreement and for three (3) years after its expiration or termination, Contractor shall maintain detailed records indicating the date, time, and nature of services provided. Such records shall be kept in accordance with Generally Accepted Accounting Principals and be easily separable from other records. The Agency, DFA, and the State Auditor, or the designee of any of the aforesaid, shall have the right to audit such records at any time upon three (3) days prior written notice to Contractor. The period such records shall be maintained and the right to audit shall be automatically extended for records that relate to litigation or settlement of claims arising out of this Agreement for a minimum of three (3) years following the termination of any such litigation or settlement of any such claims. Contractor shall ensure that subcontracts related to Contractor's performance under this Agreement contain all the requirements of this Section. Contractor shall not be compensated for time spent or any costs incurred in complying with this Section.

10. Indemnification. Contractor shall indemnify, defend, and hold harmless the State of New Mexico, its officers and employees, from and against any and all loss, cost, liability, or expense (including attorneys' fees incurred in connection with, or staff attorneys' salaries allocable to, any action the Agency takes to enforce this Agreement) for injury (bodily or

otherwise) or damage to any person or organization directly or indirectly caused by any action or omission of Contractor pursuant to this Agreement.

11. Insurance. Contractor shall maintain in full force and effect during the term of this Agreement the insurance coverage set forth below, from a company authorized to write such insurance in New Mexico. Upon request by the Agency, Contractor shall furnish the Agency with a certificate of such policy in a form satisfactory to the Agency. Such certificate and policy shall provide that the Agency shall be given thirty (30) days advance written notice before the policies are canceled, materially changed, or not renewed. The Agency reserves the right to reject insurance or insurers tendered by Contractor. If such insurance or insurer is rejected, Contractor will be granted reasonable additional time to obtain alternative coverage acceptable to the Agency, but performance of services under this Agreement may be suspended by the Agency during such time. *(Modify to reflect insurance necessary to adequately protect the State of New Mexico and the Agency, based upon the services to be provided. Insert Vehicle, Workers' Compensation Act, and Professional Liability insurance clauses as necessary. NOTE – PSAs may require only certain types of coverage. This will be determined based upon the services to be provided, the type of entity providing the coverage, etc. In addition, the point at which insurance coverage may be required (Cost Limitation Amount) and the amount of insurance may vary.)*

(a) *Comprehensive General Liability Insurance*. If the Cost Limitation Amount of this Agreement exceeds One Hundred Thousand Dollars (\$100,000), comprehensive general liability insurance with liability limits of not less than One Million Dollars (\$1,000,000) combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. Said general liability insurance must include coverage for all operations performed by Contractor. Contractual liability coverage shall specifically insure the indemnification provisions of this Agreement and the Agency shall be named as an additional insured.

(b) *Automobile Insurance*. If the Cost Limitation Amount of this Agreement exceeds One Hundred Thousand Dollars (\$100,000), automobile insurance with liability limits of not less than One Million Dollars (\$1,000,000) combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. Said automobile policy of insurance must include coverage for all operations performed by Contractor, coverage for the use of all owned, non-owned, hired automobiles, vehicles, and other equipment. Contractual liability coverage shall specifically insure the indemnification provisions of this Agreement and the Agency shall be named as an additional insured.

(c) *Workers' Compensation Insurance*. If applicable, Workers' Compensation Insurance in full compliance with the New Mexico Workers' Compensation Act, NMSA 1978, §§ 52-1-1 through 52-1-70, the New Mexico Occupational Disease Disablement Law, NMSA 1978, §§ 52-3-1 through 52-3-60, and any other worker protection rule, regulation, or statute, all as may be amended from time to time.

(d) *Professional Liability Insurance*. Contractor shall maintain in full force and effect during the term of this Agreement professional liability insurance, also known as malpractice insurance, with liability limits of not less than _____ Dollars (\$ _____), from a company authorized to write such insurance in New Mexico.

12. Work Product; Copyright, Trademark, Etc. Contractor warrants that all things Contractor produces pursuant to this Agreement will not infringe upon or violate any right to confidentiality or property right, whether intellectual or otherwise, of any third party. Contractor shall indemnify, defend, and hold harmless the State of New Mexico, its officers and employees, from and against any and all loss, cost, liability, or expense arising out of breach or claimed breach of the foregoing warranty. Nothing Contractor produces or develops, in whole or in part, pursuant to this Agreement shall be the subject of an application for copyright, trademark or other property right by or on behalf of Contractor. All things Contractor produces, develops, or acquires pursuant to this Agreement (including files, documents, memoranda, notes, work papers, or related things) shall become the property of the State of New Mexico and shall be delivered to, or if intangible assigned to, the Agency upon expiration or termination of this Agreement. Contractor shall execute, acknowledge, and deliver any documents and make any filings necessary to establish or evidenced the State of New Mexico's ownership.

13. Format of Electronic Deliverables. Text documents and spreadsheets deliverables provided to the Agency in an electronic format pursuant to this Agreement shall be prepared, stored, and delivered in Microsoft Corporation-produced software (e.g., Word or Excel), unless the Contract Manager approves the use of an alternate software format in writing. Database, spatial, and geographic information system deliverables provided to the Agency in electronic format pursuant to this Agreement shall be prepared, stored, and delivered in a software format approved of in writing by the Contract Manager. Contractor shall be responsible for requesting and obtaining the Contract Manager's written approval of the software format Contractor proposes to use prior to beginning the preparation of such deliverables. Should Contractor utilize a software format not approved of in writing by the Contract Manager, Contractor shall bear, or shall indemnify and reimburse the Agency, for any costs or expenses of any type whatsoever incurred by the Contractor or the Agency in converting or otherwise preparing such electronic deliverables in a software format acceptable to the Agency.

14. Equal Opportunity Compliance. Contractor shall abide by all applicable laws, regulations, and orders pertaining to equal opportunity and shall indemnify, defend, and hold harmless the State of New Mexico, its officers and employees, from and against any and all loss, cost, liability, or expense arising out of breach or claimed breach thereof.

15. Violation of Law. Contractor warrants that it does not have and shall not acquire any direct or indirect interest that would conflict in any manner with the services to be provided under this Agreement and that signing this Agreement will not create a violation of the Governmental Conduct Act, NMSA 1978, §§ 10-16-1 through 10-16-18. During the term of this Agreement, Contractor shall immediately notify the Agency in writing if it becomes aware of an actual or potential relationship that may be considered a conflict of interest or if it engages any current or former State of New Mexico employee as an employee or independent contractor. The Agency will advise Contractor in writing if it determines that such engagement of a current or former State of New Mexico employee is inconsistent with applicable law. Contractor acknowledges that the New Mexico Procurement Code, NMSA 1978, §§ 13-1-28 through 13-1-199 imposes civil and criminal penalties for its violation, and that New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities, and kickbacks.

16. Confidentiality. Contractor shall maintain the confidentiality of all information provided by the Agency, derived from such information, or otherwise learned or developed by Contractor pursuant to this Agreement. Contractor shall neither use nor disclose such information without the Agency's express written permission, and shall promptly notify the Agency of any unauthorized disclosure and assist in investigating or preventing the recurrence thereof. Contractor assumes responsibility for all liability caused by any violation of this Section.

17. Excusable Delay. Contractor and the Agency shall be excused from performance under this Agreement for any period such performance is prevented in whole or in part as a result of an act of God, war, civil disturbance, epidemic, court order, or other cause beyond their reasonable control. Such nonperformance shall not be a ground for termination of this Agreement but shall not by itself extend the term of this Agreement.

18. Policies and Procedures. Contractor shall follow any policies and procedures that may from time to time be established by the Agency and of which Contractor is made aware.

19. Notices. Notices and communications required or permitted under this Agreement (including change of address and facsimile or telephone number) shall be in writing and deemed fully given and received: (i) when hand-delivered to the receiving party's street address shown below, (ii) when sent by facsimile transmission to the receiving party's facsimile number shown below; (iii) one (1) day after deposit with a national overnight courier addressed to the receiving party at the street address shown below; or (iv) five (5) days after deposit in the U. S. mail, postage prepaid, addressed to the receiving party at the mailing address shown below.

Agency: _____, Contract Manager
P.O. Box 25102
Bataan Memorial Building, Room 101
407 Galisteo Street
Santa Fe, NM 87504-5102
Telephone: (505) 827-6150
Facsimile: (505) 827-3887

Contractor: _____

Telephone: (____) ____-____
Facsimile: (____) ____-____

20. Amendment and Waiver. This Agreement shall not be altered, changed, or amended other than by a written instrument executed by the parties. Amendments shall not become effective and binding unless and until approved by DFA. This Agreement may be waived only in a writing signed by the party making such waiver. Neither party's delay or omission in exercising or enforcing any right or power hereof shall impair, or be construed to be a waiver of, such right or power. No custom or practice that evolves between the parties shall be construed to lessen one party's right to require the other to perform in strict accordance with the terms of this Agreement. One party's waiver of the other's failure to fully comply with any of the terms of

this Agreement shall not be construed to be a waiver of any subsequent or other failure to comply.

21. Assignment. Contractor shall not assign or transfer any rights, obligations, duties, or other interest in, or claim for money due under, this Agreement without the prior written consent of the Agency, which consent may be withheld in the Agency's sole and absolute discretion. The Agency may assign this Agreement to another governmental agency or unit, including any assignment necessitated by governmental reorganization.

22. Legal Proceedings. Attendance or testimony by Contractor in any legal proceedings, including trials, hearings, depositions, arbitration, or mediation, shall be considered a part of this Agreement. Should the Agency request attendance by Contractor after expiration or termination of this Agreement, a new contract will be negotiated at that time at the Hourly Rates set forth above (*modify based upon method of payment if necessary*). The foregoing shall not apply to disputes solely between Contractor and the Agency.

23. Calculation of Time. Any time period herein calculated by reference to "days" means calendar days; provided, however, that if the last day for a given act falls on a Saturday, Sunday, or a holiday as observed by the State of New Mexico, the day for such act shall be first day following that is not a Saturday, Sunday, or such observed holiday.

24. Interpretation. The captions and paragraph headings used herein are for descriptive purposes only and do not limit, define, or enlarge the terms of this Agreement. Unless otherwise indicated by the context, use of the singular, plural, or a gender shall include the other, and the use of the words "include" and "including" shall be construed as if "without limitation" or "but not [be] limited to" were annexed thereafter. The parties were, or had ample opportunity to be, represented by counsel, and this Agreement shall not be interpreted for or against either party based on authorship.

25. Applicable Law. Each party shall perform its obligations hereunder in accordance with all applicable laws, and regulations now or hereafter in effect. This Agreement shall be governed by the laws of the State of New Mexico, without giving effect to its choice of law provisions. All legal proceedings arising under this Agreement shall be brought in Santa Fe before the First Judicial District Court of the State of New Mexico.

26. Survival. Terms of this Agreement that provide for rights, duties, or obligations that expressly or logically extend beyond its expiration or termination, including Contractor's indemnity obligations, shall survive such expiration or termination.

27. Severability. If any terms of this Agreement, or their application to any person or circumstance, shall be held illegal, invalid, or unenforceable, the remainder of this Agreement, or the application of such terms to persons or circumstances other than those to which it is held illegal, invalid, or unenforceable, shall not be affected; provided, however, that the remainder of this Agreement is still capable of performance in substantial accordance with the original intent of the parties.

28. Incorporation and Merger. Each of the recitals set forth at the beginning of this instrument, and any exhibits referenced herein and attached hereto, are incorporated by this reference. This Agreement incorporates all agreements, covenants, promises and understandings between the parties concerning the subject matter hereof, and all prior or contemporaneous agreements and understandings are merged into this Agreement. This Agreement may be executed in multiple originals, each of which shall be deemed an original.

29. Effective Date. This Agreement shall not become effective unless and until approved by DFA.

APPROVALS ON PAGE FOLLOWING

IN WITNESS WHEREOF, the parties have entered into this Agreement.

CONTRACTOR

_____ Date: _____

AGENCY

By: _____ Date: _____

Its: _____

Approved as to budget sufficiency:

By: _____ Date: _____

Administrative Services Division

Approved as to form:

By: _____ Date: _____

Agency Attorney

TAXATION AND REVENUE DEPARTMENT

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

ID Number: _____

By: _____ Date: _____

DEPARTMENT OF FINANCE AND ADMINISTRATION

By: _____ Date: _____

State Contracts Officer

ACKNOWLEDGEMENT OF RECEIPT OF REQUEST FOR PROPOSALS FORM
RFP NO. 2005-002 OSE/ISC

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

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than close of business on **August 17, 2005**. Only potential offerors that return this form with the indicated intention of submitting a proposal will receive copies of offeror written questions and the Agency's written responses to those questions, as well as RFP amendments, if any are issued, and notices and other correspondence relating to this RFP.

FIRM: _____
REPRESENTED BY: _____
TITLE: _____
PHONE NO.: _____
FAX NO.: _____
E-MAIL ADDRESS: _____
MAILING ADDRESS: _____

DELIVERY ADDRESS: _____

By: _____ Date: _____
(signature)
Name: _____
(printed)
Title: _____

This name and address will be used for all correspondence related to the Request for Proposal.
Firm does/does not (circle one) intend to respond to this Request for Proposals.

Richard M. DeSimone, Procurement Manager
Water Resource Allocation Program
121 Tijeras Blvd Suite 2000
Albuquerque NM, 87120
Phone: (505) 764-3872
Fax: (505) 764-3891
E-mail: rdesimone@ose.state.nm.us