

**REQUEST FOR PROPOSALS (RFP)**

**SANDOVAL COUNTY**

**SPECIAL LEGAL COUNSEL SERVICES FOR OPIOID  
INVESTIGATION/LITIGATION**



**RFP# FY19-LEGAL-01**

Release Date: October 7, 2018

Due Date: October 29, 2018

## **I. CONTRACT OBJECTIVES**

### **A. PURPOSE OF THIS REQUEST FOR PROPOSALS**

Sandoval County Board of County Commissioners is requesting sealed proposals on behalf of the Sandoval County Legal Department for Special Legal Counsel Services for Opioid Investigation/Litigation (NIGP Commodity Code # 96149). Responses will be accepted in the Finance Department, Attn: Ms. Trish Greene, Sandoval County Administrative Bldg., 1500 Idalia Road, Bldg. D 2<sup>nd</sup> Floor, and P.O. Box 40, Bernalillo, New Mexico until 3:00 p.m. (Mountain Standard Time) on October 29, 2018. The Sandoval County Board of Commissioners reserves the right to reject any and all responses.

### **B. SCOPE OF WORK**

The Sandoval County Board of Commissioners seek to retain the services of a law firm to act as Special Legal Counsel to provide advice and legal representation to the County in connection with an investigation and possible litigation involving the manufacture, marketing, sale, and distribution of prescription opioid products in Sandoval County.

Counsel shall be retained on a contingency fee basis with no costs or other compensation paid to counsel except as a percentage of any settlement monies received or damages awards paid. The County is not responsible for any of the costs or fees of the legal services. The law firm must as a matter of course, possess resources sufficient to advance all costs, including the costs of any experts needed to perform or assist in the performance of the work contemplated by this Request for Proposals (RFP).

Counsel will be responsible for handling all investigation and litigation under the direction of the County Attorney. Counsel is required to communicate directly with the County Attorney on a regular basis and, when required by the County Attorney, meet and/or confer with the Sandoval County Board of Commissioners. Litigation may include drafting of pleadings, motions, briefs, etc.; conducting and responding to discovery; attending all settlement negotiations; pre-trial, trial and post-trial court appearances; and handling all appeals.

Offeror shall:

1. Evaluate the merits of and, to the extent desired by the County, pursue litigation against opiate manufacturers, distributors and others related to the impact of opiate use within Sandoval County. The successful Offeror shall collaborate with other public entities if the County, in consultation with the successful offeror determines such collaboration to be in the best interest of the County.
2. Be responsible for legal research, advice and representation concerning the distribution and manufacture of opiates and the impact of opiates on Sandoval County
3. Brief the County Attorney and, under the County Attorney's direction, County Commissioners; elected officials; and/or employees on all matters related to this Scope of Work.

4. Provide copies of all litigation correspondence and pleadings produced and received in connection with that litigation and give timely written notice to the County Attorney on any and all pleadings, dispositive motions, rulings, hearings, trials, mediations or settlement negotiations and any other legal events relevant to this Scope of Work.
5. Meet, coordinate with and submit interim reports to the County Attorney on a basis to be determined by the County Attorney, but not less than monthly.

**C. TERM OF CONTRACT**

This Request for Proposal is to contract for one (1) year and may be extended upon agreement of the parties for an additional three (3) years, if requested by the County Manager. The term shall commence on the date of execution of an agreement.

**D. PROCUREMENT MANAGER**

Any inquiries or requests regarding this procurement should be submitted in writing to the designated Procurement Manager listed below. Attempts to contact anyone other than the Procurement Manager for the purpose of influencing the procurement decision, i.e. elected officials, County Manager, evaluation committee members, etc., may disqualify Offerors from consideration. All responses will be in writing and will be distributed to all potential Offerors who receive a copy of this Request for Proposals.

1. Sandoval County has an assigned Procurement Manager who is responsible for the conduct of this procurement whose name, address, telephone number and e-mail address are listed below:

Name: Trish Greene, Senior Procurement Specialist  
Address: Sandoval County  
1500 Idalia Road Bldg. D 2<sup>nd</sup> Floor  
PO Box 40  
Bernalillo, NM 87004  
  
Telephone: (505) 404-5873  
Fax: (505) 867-7605  
Email: [tgreene@sandovalcountynm.gov](mailto:tgreene@sandovalcountynm.gov)

2. All deliveries of responses via express carrier must be addressed as follows

Name: Trish Greene, Senior Procurement Specialist  
Reference RFP Name: ***Special Legal Counsel Services for Opioid Investigation/Litigation***  
RFP# FY19-LEGAL-01  
Address: Sandoval County  
1500 Idalia Road Bldg. D  
P.O. Box 40  
Bernalillo, NM 87004

**E. QUALIFICATIONS**

Offerors shall have been admitted to practice in the state and federal courts in the State of New Mexico for a minimum of five years or be admitted to practice in the state and federal courts of any other jurisdiction within the United States and associate with a duly licensed New Mexico attorney for court appearances.

Offerors must not be disbarred or suspended from practice in any jurisdiction and must be authorized to provide the requested services in accordance with Rule 16-505 NMRA.

**F. INSURANCE REQUIREMENTS**

The insurance required by Offerors is listed below.

1. General Conditions. Offeror shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.
2. General Liability Insurance, Including Automobile. Offeror shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,000,000 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for County by Offeror; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. County of Sandoval shall be a named additional insured on the policy.
3. Workers' Compensation Insurance. The Offeror shall comply with the provisions of the Workers' Compensation Act.
4. Increased Limits. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Section 41-4-1 et seq., Offeror shall increase the maximum limits of any insurance required herein.
5. Malpractice/Errors and Omissions Insurance. Offeror shall procure and maintain during the life of this Agreement professional liability (errors and omissions) insurance with policy limits of not less than \$1,500,000.00 per occurrence, \$2,500,000.00 per aggregate.

## II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule for the procurement, describes the major procurement events and the conditions governing the procurement.

### A. **SEQUENCE OF EVENTS**

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

<b><u>Action</u></b>	<b><u>Responsibility</u></b>	<b><u>Date</u></b>
1. Issuance of RFP	Purchasing Department	September 30, 2018
2. Acknowledgement of Receipt Form Due	Offerors	October 15, 2018
3. Deadline to Submit Additional Questions	Offerors	October 18, 2018
4. Response to Written Questions	Purchasing Department	October 23, 2018
5. <i>Submission of Proposal</i>	<i>Offerors</i>	<i>October 29, 2018 3:00 p.m.</i>
6. Proposal Evaluation	Evaluation Committee	TBD
7. Contract Negotiations	County, Offeror	TBD
8. Contract Award	Purchasing Department	TBD
9. Protest Deadline		+15 days

**B. EXPLANATION OF EVENTS**

The following paragraphs describe the activities listed in the Sequence of Events shown in Section II, Paragraph A.

**1. Issuance of RFP**

This RFP is being issued by the Sandoval County Attorney's Office and Purchasing Department.

**2. Acknowledgement of Receipt Form Due**

A potential Offeror should hand-deliver, return by facsimile or e-mail the "Acknowledgement of Receipt Form" provided as Appendix A to have its name and firm placed on the procurement distribution list. The form should be signed by an authorized representative of the organization, dated and returned by close of business on the date indicated in the "Sequence of Events" at Section II, paragraph A.

The procurement distribution list will be used for the distribution of written responses to questions and any RFP addenda.

**3. Deadline to Submit Additional Written Questions**

Potential Offerors may submit written questions regarding this RFP until the close of business on the date indicated in the "Sequence of Events" at Section II, paragraph A. All written questions must be addressed to the Procurement Manager, listed in Section I, paragraph D and sent via facsimile or e-mail.

**4. Response to Written Questions**

Written responses to written questions and any RFP addenda will be distributed on the date indicated in the "Sequence of Events" at Section II.A, to all potential Offerors whose names appear on the procurement distribution list.

Additional written requests for clarification of distributed answers or addenda must be received by the Procurement Manager no later than one (1) day after the answers or addenda were issued.

**5. Submission of Proposal**

**ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 3:00 P.M. ON OCTOBER 29, 2018. *Please be advised that Proposals received after this deadline will not be accepted.*** The date and time of receipt will be recorded on each proposal. Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section I, paragraph D. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the County's **Request for Proposals for Special Legal Counsel Services Opioid Investigation/Litigation for RFP# FY19-LEGAL-01**. Proposals submitted

by facsimile or other electronic means will not be accepted.

A public log will be kept of the names of all Offerors who submit proposals. Pursuant to NMSA 1978, Section 13-1-116, the contents of any proposal shall not be disclosed so as to be available to competing Offerors during the negotiating process.

**6. Proposal Evaluation**

The evaluation of proposals will be performed by an Evaluation Committee appointed by the Sandoval County Purchasing Department. This process will take place during the timeframe indicated in the "Sequence of Events" at II.A. During this time, the Procurement Manager 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 Offerors.

**7. Contract Negotiations**

Contract will be finalized with the most advantageous Offeror during the timeframe indicated in the "Sequence of Events" at Section II, paragraph A. In the event that mutually agreeable terms cannot be reached within the time specified, the County reserves the right to finalize a contract with the next most advantageous Offeror without undertaking a new procurement process.

**8. Contract Award**

The County anticipates awarding the contract on the date in the "Sequence of Events" at Section II, paragraph A. These dates are subject to change at the discretion of the Procurement Manager.

The contract shall be awarded to the Offeror whose proposal is most advantageous to the County, taking into consideration the evaluation factors set forth in the RFP. The most advantageous proposal may or may not have received the most points.

**9. Right to Protest**

Any protest by an Offeror must be timely and in conformance with NMSA 1978, Section 13-1-172 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. The protests must be delivered to the Procurement Manager as proved in Section 1, Paragraph D:

*Protests will not be accepted by facsimile or other electronic means.  
Protests received after the deadline will not be accepted.*

**C. GENERAL REQUIREMENTS**

This procurement will be conducted in accordance with Chapter 13, NMSA 1978, NMAC 1.4.1 and the Sandoval County Procurement Regulations.

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

Offerors must indicate their acceptance of the Conditions Governing the Procurement section in the Letter of Transmittal. Submission of a proposal constitutes acceptance of the contract template attached hereto as Appendix C.

2. **Incurring Cost**

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

3. **Prime Offeror Responsibility**

Any contract that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of the contract with the County including any payments to subcontractors. The County will only make contract payments to the prime Offeror.

4. **Subcontractors**

Use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name. The prime Offeror shall be wholly responsible for the entire performance whether or not subcontractors are used.

5. **Amended Proposals**

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

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

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request 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 the applicable procurement regulations.

7. **Proposal Offer Firm**

Responses to this RFP, including proposal prices, will be considered firm for ninety (90) days after the due date for receipt of proposals or ninety (90) days after receipt of a best and final offer if one is submitted.

8. **Disclosure of Proposal Contents**

After award, proposals, except contents for which the Offeror has made a written request for confidentiality, shall be public record. 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 in order to facilitate eventual public inspection of the non-confidential portion of the proposal. Confidential data is 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. The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.

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

**9. No Obligation**

This procurement in no manner obligates Sandoval County or any of its departments to the use of any proposed professional services until a valid written contract is awarded and approved by the appropriate authorities.

**10. Termination**

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

**11. Sufficient Appropriation**

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

**12. Legal Review**

The County requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror concerns must be promptly brought to the attention of the Procurement Manager.

**13. Governing Law**

This procurement and any agreement with Offerors that may result shall be governed by the laws of the State of New Mexico.

**14. Basis for Proposal**

Only information supplied by the County in writing through the Procurement Manager or

in this RFP should be used as the basis for the preparation of Offeror proposals.

**15. Contract Terms and Conditions**

The contract between the County and the Offeror will follow the format specified by the County and contain the terms and conditions set forth in Appendix C.

However, the County reserves the right to negotiate with a successful Offeror provisions in addition to those contained in this RFP.

If an Offeror objects to any of the County's terms and conditions as contained in this Section or in Appendix C, that Offeror must propose specific alternative language. The County may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions are not acceptable to the County and will result in disqualification of the Offeror's proposal.

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

**16. Offeror's Terms and Conditions**

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

**17. Contract Deviations**

Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between the County and the selected Offeror and shall not be deemed an opportunity to amend the Offeror's proposal.

**18. Offeror Qualifications**

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

**19. Right to Waive Minor Irregularities**

The Evaluation Committee reserves the right to waive minor irregularities. The Evaluation Committee also reserves the right to waive mandatory requirements provided that doing so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee, subject to approval by the Procurement Manager.

**20. Change in Offeror Representatives**

The County reserves the right to require a change in Offeror representatives if the assigned representatives are not, in the opinion of the County, meeting its needs adequately. Any

change in Offeror representative must receive prior County approval.

**21. 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 kick-backs.

**22. County Rights**

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

**23. Right to Publish**

Throughout the duration of this procurement process and contract term, potential Offerors and Offerors must secure from the County 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.

**24. 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.

**25. Electronic Mail Address**

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

**26. Preference in Procurement**

**a. *New Mexico Resident Business Preference***

New Mexico law, Section 13-1-21 NMSA 1978, provides a preference in the award of a public works contract for an “**in-state resident business.**” Application of a resident business preference for any Offeror requires the Offeror to provide a copy of a valid and current certificate as a resident business. Certificates are issued by the state taxation and revenue department.

If an Offeror submits with its proposal a copy of a valid and current in-state resident business certificate, 5% of the total weight of all evaluation factors used in the evaluation of proposals may be awarded or added to the Offerors score.

Certification by the department of taxation and revenue for the resident Offeror takes into consideration such activities as the business or Offeror’s payment of property taxes or rent in the state and payment of unemployment insurance on

employees who are residents of the state.

**OR**

**b. New Mexico Resident Veteran Business Preference**

New Mexico law, Section 13-1-22 NMSA 1978, provides a preference in the award of a public works contract for an “**in-state resident veteran business.**” Certification by the department of taxation and revenue for the resident veteran business requires the Offeror to provide evidence of annual revenue and other evidence of veteran status.

If an Offeror submits with its proposal a copy of a valid and current veteran resident business certificate, 10% of the total weight of all the evaluation factors used in the evaluation of proposals may be awarded or added to the Offeror’s score, depending on the business’ annual revenue.

**The resident business preference is not cumulative with the resident veteran business preference.**

**III. RESPONSE FORMAT AND ORGANIZATION**

**A. NUMBER OF RESPONSES**

Offerors shall submit only one proposal in response to this RFP.

**B. NUMBER OF COPIES**

Offerors shall deliver one (1) original and five (5) identical copies of their proposal to the location specified in Section I, Paragraph D, on or before the closing date and time for receipt of proposals.

In addition to the above requirements, the Offeror must provide one (1) electronic copy organized in the format requested with each tab’s information as a separate file on a CD-R, CD-RW or Flash Drive in one of these formats: Adobe PDF (pdf), Microsoft Word (doc), or Microsoft Excel (xls). The electronic copy must be organized and laid out in the same format as outlined in the Proposal Formant noted below.

**C. PROPOSAL FORMAT**

All proposals shall be limited to thirty (30) pages, with exception to professional licenses and certifications, which shall be added as appendices. The document shall be typewritten on standard 8 1/2 x 11 paper, with a font no smaller than 12 pt. pitch, with nominal 1” margins and normal line spacing. Proposals shall be placed within a binder with tabs delineating each section.

**1. Proposal Organization**

The proposal must be organized and indexed in the following format, and must contain, at a minimum, all listed items in the sequence indicated.

- a. Letter of Transmittal
- b. Table of Contents
- c. Proposal Summary
- d. Response to Mandatory Evaluation Factors
- e. Response to County Terms and Conditions
- f. Offeror's Additional and/or Different Terms and Conditions
- g. A copy of Offeror's malpractice insurance showing coverage of at least one million (\$1,000,000) for every attorney who will provide legal services to the County.

Within each section of their proposal, Offerors should address the items in the order in which they appear in this RFP under Section IV., Paragraph B. Mandatory Evaluation Factors. All forms provided in the RFP must be thoroughly completed and included in the appropriate section of the proposal.

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

The proposal summary may be included by Offerors to provide the Evaluation Committee with an overview of the technical and business features of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the Offeror's proposal.

Offerors may attach other materials that they feel may improve the quality of their responses. However, these materials should be included as items in a separate appendix.

## 2. Letter of Transmittal

Each proposal must be accompanied by a letter of transmittal. The letter of transmittal **MUST**:

- a. Identify the submitting organization;
- b. Identify the name and title of the person authorized by the organization to contractually obligate the organization;
- c. Identify the name, title and telephone number of the person authorized to negotiate the contract on behalf of the organization;
- d. Identify the names, titles and telephone numbers of persons to be contacted for clarification;
- e. **Explicitly** indicate Acceptance of the Conditions Governing the Procurement stated in Section II, Paragraph C.1;
- f. Be signed by the person authorized to contractually obligate the organization;
- g. Acknowledge receipt of any and all amendments to this RFP.
- h. Acknowledge and accept the terms and conditions of the Contingency Fee Agreement attached as Appendix C and propose additional and/or different terms and conditions.

## IV. SPECIFICATIONS

Offerors should respond in the form of a thorough narrative to each evaluation criteria. The narratives together with required supporting materials will be evaluated and assigned points according.

### A. INFORMATION

#### Contract

The contract is anticipated to commence in or around November 2018. Sandoval County intends on awarding a contract with an initial term of one (1) year with the option to extend the term in one year increments, not to exceed a total of four (4) years.

### B. MANDATORY EVALUATION FACTORS

Brief explanations of each evaluation factor are listed below. Offerors are encouraged to fully address each factor, as points are available for the Offeror's response to each. Failure to respond to a mandatory evaluation factor will result in the disqualification of the proposal as non-responsive. All factors within this section are mandatory.

#### 1. Organization

- Provide a history of the Offeror's firm, include a full description of your firm for the last 3 years starting with the year your firm was organized and began its practice in the relevant practice area, as well as any material developments in your organization (i.e. changes in ownership) over the past three years and any potential material developments anticipated in the near future.
- Provide information on the law firm's office locations and staffing at each office as well as the types of legal services/specialized area of expertise each office location provides.
- Describe any malpractice claims against your law firm or any attorney in your firm within the last five years and the status or outcome of each claim.

#### 2. Professional Competence and Specialized Experience

- Provide an overview of current and prior experience in work comparable to the Scope of Work required in this RFP.
- Provide resumes of key staff, consultants or other team members describing specific relevant experience of each proposed staff.
- Include background, qualifications, education, training and years of experience relevant to this RFP.
- Include a summary of experience before the New Mexico Courts, Federal Courts, particularly related to the relevant legal services within this RFP;
- Provide information about any specialized experience in providing legal services for projects of similar scope that demonstrate competence to successfully complete the project including experience related to complex commercial litigation.
- List each attorney within your firm who is on the MDL Leadership Team established in the consolidated litigation within the United States District Court in the Northern District of Ohio, MDL No. 2804 before Judge Dan Aaron

- Polster and specify in what capacity they are a part of that team.
- List each attorney within your firm who is on the Executive Committee established in the consolidated litigation within the United States District Court in the Northern District of Ohio, MDL No. 2804 before Judge Dan Aaron Polster.
- List each attorney within your firm who is on the Steering Committee established in the consolidated litigation within the United States District Court in the Northern District of Ohio, MDL No. 2804 before Judge Dan Aaron Polster.
- Apart from the consolidated litigation within the United States District Court in the Northern District of Ohio, MDL No. 2804 before Judge Dan Aaron Polster, provide a list of all cases related to opiate manufacturers and distributors (identifying by case name and proper legal citation) in which attorneys from your law firm have appeared, the extent of involvement from the attorneys in your law firm and the ultimate outcome or current status of each case.

3. Evidence of Understanding Scope of Work

- Provide an in-depth response and understanding of the requested scope of work;
- Include an itemized description of services to be provided that correlates to the scope of work.
- Discuss challenges that might be expected related to the scope of work.
- Include all information for any subcontractor or consultant that the Offeror has indicated to be part of the project team including what areas of work they will perform.
- Demonstrate the possession of resources to fund the investigation and litigation of complex commercial litigation-preferably complex consumer fraud and unfair deceptive trade practices litigation, and/or complex fraud and regulatory-related investigations against multiple defendants on a contingency fee basis with no costs paid by the County except those recuperated from a Recovery as that term is defined in the attached sample Contingency fee Agreement (Appendix C).
- Describe in detail the understanding of the required fee arrangements.
- Note any services that cannot be provided.

4. Capacity and Capability

- Describe your administrative structure of representation (i.e. proposed staffing assignments, their qualifications and capabilities years of experience, specific roles, skills and/or strengths and their office locations), and an understanding of the needs of the County in this litigation. Specify your firm's knowledge of and experience representing local government boards and commissions.
- Include information about Offeror's approach in providing the required services and capacity to implement the services and deliverables in a timely manner including whether you expect to assign or subcontract certain aspects of the work to other law firms or attorneys not employed by your law firm, and confirmation that you will have an attorney assigned to this matter, or affiliate with an attorney, who has been admitted to practice in the State of New Mexico and federal courts for a minimum of five (5) years. For each attorney expected to work on the scope of work of this RFP:

1. their name;

2. a current resume which includes education, years and jurisdiction
  3. of admission to practice, work experience, any professional distinctions and memberships in any professional organizations;
  4. a detailed description of the legal experience related to the relevant legal services contained in this RFP. The description should include: (a) years of experience in the relevant legal services contained in this RFP, (b) percent of practice related to the relevant legal services contained in this RFP, and (3) percent of the relevant legal services contained in this RFP representing plaintiffs and percent representing defendants;
  5. a summary of experience before New Mexico Courts and federal courts and administrative bodies, particularly related to the relevant legal services contained in this RFP; and
  6. a statement that each attorney is a member in good standing in each jurisdiction they are licensed.
- Provide information on the ability to comply with the applicable state and federal laws regarding access to and retention of records requirements, including all ethical and professional standards.
  - Describe the extent of your firm's knowledge and/or experience representing local government boards and commissions, including knowledge of, and experience in the investigation and litigation of, claims on behalf of local government against manufacturers, distributors, and ancillary persons or entities who introduce dangerous, but otherwise lawful, substances to residents of the local government.
  - Describe any material arrangements, relationships, associations, employment or other contracts that may cause a conflict of interest or the appearance of a conflict of interest if your law firm is awarded a contract for legal services by Sandoval County.
  - Indicate the relationship of the services requested in this RFP to other current projects/contracts the Offeror or firm may be involved in, including identification of legal services being provided for other clients that may create conflicts of interest with the Offeror's services for the County.
  - List the extent each participant in the proposed litigation team is already committed to other legal matters and an explanation of how the participants will have necessary to devote to this matter.

5. Past Record of Performance

- Provide a list of governmental entities, agencies or other political subdivisions that the law firm represents and/or has represented including the time period of representation and the nature of the work performed.
- Provide a list of major private clients that your law firm represents and the nature of work being performed.
- Provide a list of opiate manufacturers, distributors or prescribers that the law firm has represented in the last ten years and the nature of the work performed.
- Describe any ethics complaints against your law firm or any attorney in your firm within the last five years and the status of outcome of each complaint.
- Provide a list of any material arrangements, relationships, associations, employment or other contracts that may cause a conflict of interest or the appearance of a conflict of interest if your firm is awarded a contract for legal services by Sandoval County. Such list should include opiate manufacturers,



distributors or prescribers that the law firm has represented in the last ten years and the nature of work performed. In regard to work for a prescriber of opioids, the nature of the work would only be required if it pertained to prescribing opioids.

- Provide a minimum of three references from organizations who the Offeror previously or currently provides the services described in this RFP. The minimum information that should be provided about each reference is:
  - Name of individual or entity for which services were provided.
  - Address of individual or entity.
  - Name, email, fax and telephone number of contact person.
  - Types of services provided and dates services were provided.

6. Offerors Fee

Provide the Offerors Fee \_\_\_\_\_% of the remaining balance of recovery

7. Financial Stability

Offerors must submit copies of the most recent years independently audited financial statements and the most current 10k, as well as financial statements for the proceeding three years, if they exist. The submission must include the audit opinion, the balance sheet, statements of income, retained earnings, cash flows and the notes to the financial statements. If independently audited financial statements do not exist, Offeror must state the reason, and instead, submit sufficient information (e.g. D & B report) to enable the Evaluation Committee to assess the financial stability of the Offeror.

8. Insurance Requirements

The insurance required by Offerors is listed below.

1. General Conditions. Offeror shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.
2. General Liability Insurance, Including Automobile. Offeror shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,000,000 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for County by Offeror; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. County of Sandoval shall be a named additional insured on the policy.
3. Workers' Compensation Insurance. The Offeror shall comply with the provisions of the Workers' Compensation Act.

4. Increased Limits. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Section 41-4-1 et seq., Offeror shall increase the maximum limits of any insurance required herein.
5. Malpractice/Errors and Omissions Insurance. Offeror shall procure and maintain during the life of this Agreement professional liability (errors and omissions) insurance with policy limits of not less than \$1,500,000.00 per occurrence, \$2,500,000.00 per aggregate.

## V. EVALUATION

### A. EVALUATION SCORING

The County will evaluate responsive proposals and assign a numerical score in each category, not to exceed the maximum allowed score for that category, as determined through the Offeror's attention to the factor detailed in the following sections. The amount of discussion to be applied to each listed topic is an individual choice of the Offeror; however, discussion should be detailed enough to inform and educate the Evaluation Committee.

Proposals will be scored based upon a comparison of the information submitted by each Offeror against the evaluation factors outlined below. Each Evaluation Factor is assigned the following points:

- |   |            |
|---|------------|
| 1. Organization.....  | 100 points |
| 2. Professional Competence and Specialized Experience ..... | 300 points |
| 3. Evidence of Understanding Scope of Work.....             | 100 points |
| 4. Capacity and Capability.....                             | 200 points |
| 5. Past Record of Performance.....                          | 200 points |
| 6. Offeror's Fee.....                                       | 100 points |

**TOTAL POINTS..... 1000 points**

If a proposal contains New Mexico Resident Business Certificate or New Mexico Resident Veterans Business Certificate, the applicable preference will be applied in accordance with Section 13-1-21-NMSA 1978, and the County Purchasing Regulations.

- Proposal contains a valid N.M. Resident Business Certificate.....**50 points**
- OR**
- Proposal contains valid N.M. Resident Veteran Business Certificate ..... **100 points**

**The following requirements are not scored, but will result in a fail if not provided:**

Proof of Financial Stability	Pass/Fail
Proof of Insurance	Pass/Fail
Letter of Transmittal	Pass/Fail
Signed Campaign Contribution Disclosure Form	Pass/Fail
Conflict of Interest Affidavit	Pass/Fail

**B. EVALUATION PROCESS**

The evaluation process will follow the steps listed below:

1. All Offeror proposals will be reviewed for compliance with the mandatory specifications stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the Offeror for clarification of the response.
3. The Evaluation Committee may use other sources of information to perform the evaluation.
4. Responsive proposals will be evaluated on the factors in Section IV, paragraph B that have been assigned a point value. The responsible Offeror with the highest score will be selected as the finalist. The Offeror that receives the highest points and is most advantageous to the County, taking into consideration the evaluation factors in Section IV, will be recommended for contract award. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

**VI. LIST OF APPENDICES**

**A. Acknowledge of Receipt Form**

Potential offerors **should** hand deliver or return by facsimile, registered or certified mail or email the “Acknowledgement of Receipt Form” (see APPENDIX A) that accompanies this document to have their organization placed on the procurement distribution list. The form **should** be signed by an authorized representative of the organization and delivered to the Procurement Manager no later than the date specified in the Sequence of Events. The procurement distribution list will be used for the distribution of important information regarding this procurement.

**B. Campaign Contribution Disclosure Form**

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

### **C. Letter of Transmittal Form**

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

D. **Contract Template** (See APPENDIX D) This is a sample contract.

### **E. Conflict of Interest Affidavit**

Offerors must include signed and completed Conflict of Interest Form (APPENDIX E) with RFP documents. The Offeror warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Offeror certifies that the requirements of the Governmental Conduct Code Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee or former state employee have been followed.

### **F. Reference Questionnaire**

Sandoval County, as a part of the RFP process, requires proposing vendors to submit a minimum of three (3) business references as required within this document. The purpose of these references is to document the experience relevant to the scope of work and provide assistance in the evaluation process.

The proposing vendor is **REQUIRED** to send the following Reference Form (APPENDIX E) to each business reference listed. **The forms must be returned to Sandoval County by October 25, 2018.** The business reference, in turn, is requested to submit the Reference Form directly to the Sandoval County Procurement Officer by the RFP submission deadline for inclusion in the evaluation process. The form and information provided will become a part of the submitted proposal. The business reference may be contacted for validation of prior experience.

### **G. Resident Business or Resident Veterans Preference**

To ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended), Offerors must include a copy of their preference certificate in this section. In addition, for resident Veterans Preference, the attached certification Form (APPENDIX G) must accompany any Offer and any business wishing to receive the preference must complete and sign the form.

**APPENDIX A**  
**ACKNOWLEDGEMENT OF RECEIPT FORM**

**APPENDIX A**

**ACKNOWLEDGEMENT OF RECEIPT FORM  
SPECIAL LEGAL COUNSEL SERVICES  
FOR OPIOID INVESTIGATION/LITIGATION  
RFP# FY19-LEGAL-01**

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 table of contents, and ending with **Appendix G**.

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than close of business on **October 15, 2018**. Only potential Offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all Offeror written questions and the County's written responses to those questions as well as RFP amendments, if any are issued.

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

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

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

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

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

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

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

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

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

Trish Greene, Senior Procurement Specialist  
Sandoval County  
1500 Idalia Road Bldg. D 2<sup>nd</sup> Floor  
PO Box 40  
Bernalillo, NM 87004  
(505) 404-5873  
(505) 867-7605  
[tgreene@sandovalcountynm.gov](mailto:tgreene@sandovalcountynm.gov)

**APPENDIX B**  
**CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

## APPENDIX B

### CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Section 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective Offeror 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 Offeror must disclose whether they, a family member or a representative of the prospective Offeror 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 Offeror submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the Offeror signs the contract, if the aggregate total of contributions given by the prospective Offeror, a family member or a representative of the prospective Offeror to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 of the Procurement Code if: 1) a prospective Offeror, a family member of the prospective Offeror, or a representative of the prospective Offeror 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 Offeror fails to submit a fully completed disclosure statement pursuant to the law.

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

THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE OFFEROR 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 Offeror is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

“**Campaign Contribution**” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or



expend contributions on that official’s behalf for the purpose of electing the official to statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

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

“**Pendency of the procurement process**” means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

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

“**Representative of a prospective Offeror**” 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 Offeror.

Name(s) of Applicable Public Official(s) if any: [Chairman David J. Heil](#); [Commissioner Dr. James F. Holden-Rhodes](#); [Commissioner Jay C. Block](#); [Commissioner Don G. Chapman](#); [Commissioner F. Kenneth Eichwald](#); [Assessor Tom Garcia](#); [Clerk Eileen Garbagni](#); [Sheriff Douglas C. Wood](#); [Probate Judge Charles Christmann](#); and [Treasurer Laura M. Montoya](#).

**DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE OFFEROR:**

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

Relation to Prospective Offeror: \_\_\_\_\_

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

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

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

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

(Attach extra pages if necessary)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

**--OR--**

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

**APPENDIX C**  
**LETTER OF TRANSMITTAL FORM**

**APPENDIX C**  
**Letter of Transmittal Form**

**RFP#:** \_\_\_\_\_  
**Offeror Name:** \_\_\_\_\_ **FED ID#** \_\_\_\_\_

Items #1 to #7 EACH MUST BE COMPLETED IN FULL

1. **Identity (Name) and Mailing Address** of the submitting organization:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. For the person authorized by the organization to contractually obligate on behalf of this Offer:

Name \_\_\_\_\_

Title \_\_\_\_\_

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

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

3. For the person authorized by the organization to negotiate on behalf of this Offer:

Name \_\_\_\_\_

Title \_\_\_\_\_

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

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

4. For the person authorized by the organization to clarify/respond to queries regarding this Offer:

Name \_\_\_\_\_

Title \_\_\_\_\_

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

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

5. Use of Sub-Offerors (Select one)

\_\_\_ No sub-Offerors will be used in the performance of any resultant contract OR

\_\_\_ The following sub-contractors will be used in the performance of any resultant contract:

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

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

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

7. \_\_\_ On behalf of the submitting organization named in item #1, above, I accept the Conditions Governing the Procurement

\_\_\_ I concur that submission of our proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.

\_\_\_ I acknowledge receipt of any and all amendments to this RFP.

\_\_\_\_\_, 2018  
Authorized Signature and Date (Must be signed by the person identified in item #2, above.)

**APPENDIX D**  
**TEMPLATE AGREEMENT**

**APPENDIX C PROFESSIONAL SERVICES  
AGREEMENT BETWEEN SANDOVAL  
COUNTY AND [insert entity name]**

**THIS AGREEMENT** is made and entered into this day of \_\_\_\_\_ 2018, by and between **Sandoval County**, hereinafter referred to as the “County”, with a principal place of business located at 1500 Idalia Road, Building D, Bernalillo, NM 87004 and [insert entity name], hereinafter referred to as the “Offeror”, with a principal place of business located at [insert address].

**WHEREAS**, the County requires legal assistance on matters involving the national opioid epidemic or opioid crisis and its effect on Sandoval County; and

**WHEREAS**, pursuant to NMSA 1978, Sections 13-1-112 and 13-1-117 of the Procurement Code, Request for Proposal No. FY19-LEGAL-01 was issued to procure these legal services; and

**WHEREAS**, the County requires the services of the Offeror and the Offeror is qualified and willing to provide these services and both parties wish to enter into this Agreement.

**NOW, THEREFORE**, in consideration of the premises and mutual obligations herein, the parties hereto mutually agree as follows:

**1. SCOPE OF WORK**

At the discretion of the County Attorney or the County Attorney’s designee, Offeror shall provide the following professional legal services:

- a) Provide advice and legal representation to the County in connection with an investigation and possible litigation involving the manufacture, marketing, sale, and distribution of prescription opioid products in Sandoval County.
- b) Offeror shall be solely responsible for all fees and costs associated with this representation unless there is a Recovery.
- c) Brief County Attorney on all matters related to this Scope of Work.
- d) Provide copies of all litigation correspondence and pleadings produced and received in connection with litigation on behalf of the County and give timely written notice to the County Attorney on any and all pleadings, dispositive

motions, rulings, hearings, trials, mediations or settlement negotiations and any other legal events relevant to this Scope of Work.

- e) Meet, coordinate with and submit interim reports to the County Attorney on a basis to be determined by the County Attorney, but not less than monthly.
- f) Refrain from making any settlement or compromise of any nature of any of the County's claims without the County's prior approval. The County has the absolute right to accept or reject any settlement or compromise. The County agrees to seriously consider any settlement offer Offeror recommends before making a decision to accept or reject such offer.

## **2. CONTINGENT FEE COMPENSATION; COSTS AND EXPENSES**

A. Offeror will be compensated for service performed only if the Offeror obtains Recovery for the County. Recovery means a monetary recovery stemming from performance of the scope of work set forth herein, acceptable to the County, and obtained by Offeror, whether by suit, settlement, or otherwise. Absent Recovery, Offeror will not be compensated for fees and costs associated with this Agreement. From any Recovery, Offeror will first be reimbursed for all actual costs and expenses incurred in the representation of Sandoval County in this matter. The fee then paid Offeror will be \_\_% of the remaining balance of the Recovery. The County will make payment exclusively to the Offeror and will not make payment to third parties whose services are rendered to the Offeror as part of Offeror's Scope of Work under this Agreement. In the event of a loss at trial or abandonment of the claim prior to recovery of any sums, no monies shall be paid to Offeror for any work performed or any costs incurred.

B. Offeror shall receive the above-stated percentage fee in consideration of its services under and pursuant to this Agreement, but if the County does not prevail in the above- stated matter for which Offeror is employed, Offeror shall not receive any sum whatsoever.

C. Offeror's fee set forth above is not set or regulated by law but has been freely negotiated between the Offeror and County. Unless Offeror and County negotiate and execute a separate agreement, the County need not pay Offeror for any matter related to, but not specifically covered in, this Agreement.

D. No settlement or compromise of any nature shall be made of any of the County's claims without the County's prior written approval.

E. Payment of Offeror's fee under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

F. Offeror will incur various costs and expenses in performing these legal services. Costs and expenses shall include, but are not limited to, court fees, jury fees, service of process charges, court and deposition reporters' fees, photocopying and reproduction costs, notary fees, long distance telephone charges, messenger and other delivery fees, postage, deposition costs, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses, consultant, expert witness, professional mediator, and arbitrator and/or special master fees. Costs and expenses will be compensated at cost in the event of a sufficient recovery. In-office photocopying shall be charged at the rate of [insert price]/page. Facsimile charges shall be charged at the rate of /page. Mileage shall be compensated at the rate of .43 cents per mile.

### **3. EFFECTIVE DATE AND TERM**

This Agreement shall be effective upon the date indicated above (Effective Date) and the term shall be two years from the Effective Date, unless earlier terminated pursuant to Section 5 (Termination) of this Agreement. The County has the option to extend the term of this Agreement in one-year increments and at the same rates, terms and conditions, for a term not to exceed a total of four years. The County may exercise this option by submitting a written notice to the Offeror that the term will be extended another year. The notice must be submitted to the Offeror at least 60 days prior to the expiration of the term of this Agreement.

### **4. ADDITIONAL SERVICES**

A. The parties agree that all tasks set forth in Section 1 (Scope of Work) of this Agreement, shall be completed in full, to the satisfaction of the County, for the contingent fee set forth in Section 2 (Contingent Fee Compensation; Cost and Expenses) of this Agreement, and for no other cost, amount, fee, or expense.

B. The County may from time to time request changes in the Scope of Work to be performed hereunder. Such changes shall not affect the Offeror's compensation as set forth in Section 3 above. Any changes, amendments or modifications to the Scope of Work shall be incorporated in written amendments to this Agreement.

### **5. DISCHARGE AND WITHDRAWAL**

The County may discharge the Offeror at any time and in the event of such termination neither party shall have any rights against the other party, except as follows. In the event of a recovery by the County against the Defendants of a claim brought by Offeror subsequent to termination, Offeror shall have rights in the nature of *quantum meruit* to recover fees, costs and expenses reasonably allocable to their work prior to termination. Offeror may withdraw with the County's consent or, within a reasonable time after giving notice to the County, for good cause. Good cause includes the County's breach of this Agreement and/or the County's refusal to cooperate with the Offeror in pursuing this litigation, the Offeror's determination that claims could not be brought in good faith, or any other fact or circumstance that would render Offeror's continuing representation unlawful



or unethical.

## **6. INDEPENDENT OFFEROR**

The Offeror and its agents and employees are independent Offerors and are not employees or agents of the County. Accordingly, the Offeror and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use County vehicles, or participate in any other benefits afforded to employees of the County. Except as may be expressly authorized elsewhere in this Agreement, the Offeror has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.

## **7. ASSIGNMENT**

The Offeror shall not assign or transfer any interest in this Agreement or assign any claims for compensation due or to become due under this Agreement without the advance written approval of the County. Any attempted assignment or transfer without the County's advance written approval shall be null and void and without any legal effect.

## **8. SUBCONTRACTING**

The Offeror shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advance written approval of the County. Any attempted subcontracting or delegating without the County's advance written approval shall be null and void and without any legal effect.

## **9. PERSONNEL**

A. All work performed under this Agreement shall be performed by the Offeror or under its supervision.

B. The Offeror represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of or have any contractual relationships with the County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

## **10. RELEASE**

Upon its receipt of all payments due under this Agreement, the Offeror releases the County, its Elected Officials, officers, agents and employees from all liabilities, claims, and obligations whatsoever arising from or under or relating to this Agreement.

## **11. CONFIDENTIALITY**

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

County.

## **12. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT;**

- A. The County has the unrestricted right to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other material prepared under or pursuant to this Agreement.
- B. The Offeror acknowledges and agrees that any material produced in whole or in part under this Agreement is a work made for hire. Accordingly, to the extent that any such material is copyrightable in the United States or in any other country the County shall own such copyright.

## **13. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED**

This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. The Offeror specifically acknowledges and agrees that the County shall not be responsible for any changes to Section 1 (Scope of Work) of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

## **14. ENTIRE AGREEMENT; INTEGRATION**

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

## **15. NOTICE OF PENALTIES**

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

## **16. EQUAL OPPORTUNITY COMPLIANCE**

- A. The Offeror agrees to abide by all Federal, State, and local laws, ordinances, and rules and regulations pertaining to equal opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, the Offeror specifically agrees not to discriminate against any person with regard to employment with the Offeror or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.
- B. The Offeror acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

## **17. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW**

- A. In performing its obligations hereunder, the Offeror shall comply with all applicable laws, ordinances, and regulations.
- B. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules.

## **18. RECORDS AND INSPECTIONS**

To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, the Offeror agrees to (i) maintain such books and records in accordance with State of New Mexico records retention schedule and dispose of such records in accordance with the disposition of public records process in effect for the State of New Mexico at the time of disposition of those records; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles (“GAAP”).

## **19. SEVERABILITY**

If any term or condition of this Agreement is held invalid or non-enforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent of the law.

## **20. NOTICES**

All notices required to be given to the County under this Agreement shall be mailed (pre-postage paid) to:

Trish Greene, Senior Procurement Specialist  
Sandoval County  
1500 Idalia Road Bldg. D 2<sup>nd</sup> Floor  
PO Box 40  
Bernalillo, NM 87004

(505) 404-5873

(505) 867-7605

[tgreene@sandovalcountynm.gov](mailto:tgreene@sandovalcountynm.gov)

All notices required to be given to the Offeror under this Agreement shall be mailed (pre- postage paid) to: **[insert contact info]**

## **21. OFFEROR’S REPRESENTATIONS**

The Offeror hereby represents and warrants that:

A. This Agreement has been duly authorized by the Offeror, the person executing this Agreement has authority to do so, and, once executed by the Offeror, this Agreement shall constitute a binding obligation of the Offeror.

B. This Agreement and Offeror's obligations hereunder do not conflict with Offeror's corporate agreement.

C. Offeror represents and warrants that it has completed diligent inquiry within its offices and conducted a search of other clients to determine whether Offeror's performance of the Scope of Work under this Agreement might create a potential conflict of interest with any other clients.

## **22. FACSIMILE SIGNATURES**

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

## **23. NO THIRD-PARTY BENEFICIARIES**

This Agreement was not intended to and does not create any rights in any persons not a party hereto.

## **24. INSURANCE**

A. General Conditions. The Offeror shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.

B. General Liability Insurance, Including Automobile. The Offeror shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,000,000 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Offeror; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. The County of Sandoval shall be a named additional insured on the policy.

C. Workers' Compensation Insurance. The Offeror shall comply with the provisions of the Workers' Compensation Act.

D. Increased Limits. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Offeror shall increase the maximum limits of any insurance required herein.

E. Professional Liability [Malpractice/Errors and Omissions Insurance]. The Offeror shall procure and maintain during the life of this Agreement professional liability (errors and omissions) insurance with policy limits of not less than \$1,500,000.00 per occurrence, \$2,500,000.00 per aggregate.

**25. PERMITS, FEES, AND LICENSES**

Offeror shall procure all permits and licenses, pay all charges, fees, and royalties, and give all notices necessary and incidental to the due and lawful performance of its obligations hereunder.

**26. NEW MEXICO TORT CLAIMS ACT**

No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by County or its “public employees” at common law or under the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, et seq.

**27. CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

The Offeror agrees to compute and submit simultaneous with execution of this agreement a Campaign Contribution Disclosure Form approved by the County.

**28. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS.**

The Offeror appoints [insert name] as its agent upon whom process and writs in any action or proceeding arising out of or related to this Agreement may be served. The Offeror acknowledges and agrees that service upon its designated agent shall have the same effect as though the Offeror were actually and personally served within the state of New Mexico.

**29. SURVIVAL**

The following provisions shall survive termination of this Agreement: RECORDS AND INSPECTION, RELEASE, CONFIDENTIALITY, PUBLICATION AND USE OF MATERIAL, COMPLIANCE WITH APPLICABLE LAW, NO THIRD-PARTY BENEFICIARIES AND SURVIVAL.

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

**SANDOVAL COUNTY:**

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Dianne Maes  
County Manager

Approved as to form  
Robin S. Hammer  
Sandoval County Attorney

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**OFFEROR:**

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(Signature)

---

Date

---

(Print name and title)

**APPENDIX E**  
**CONFLICT OF INTEREST AFFIDAVIT**

**APPENDIX E**

***CONFLICT OF INTEREST AFFIDAVIT***

STATE OF NEW MEXICO )

) ss.

COUNTY OF SANDOVAL )

I, \_\_\_\_\_ (name), being first duly sworn upon my oath, depose and state the following:

I am a former employee of \_\_\_\_\_ (name of Department/Agency), having separated/retired from state employment as of \_\_\_\_\_ (date).

I am a current employee of \_\_\_\_\_ (name of Department/Agency), or a legislator with the state, or the family member (spouse, parent, child, sibling by consanguinity or affinity) of a current employee or legislator with the state. Being a current employee or legislator or family member of a current employee or legislator of the state, I hereby certify that I obtained this Agreement pursuant to Sections 10-16-7 or 10-16-9 NMSA 1978, that is, in accordance with the Procurement Code except that this Agreement has NOT been awarded via the sole source or small purchase procurement methods.

The Department/Agency and I have entered into an agreement in the amount of \$\_\_\_\_\_.

Section 10-16-8.A(1) NMSA 1978 of the Governmental Conduct Act does not apply to this Agreement because I neither sought a contract with the Department/Agency, nor engaged in any official act which directly resulted in the formation of the Professional Services Agreement while an employee of the Department/Agency.

To the best of my knowledge, this Agreement was awarded in compliance with all relevant provisions of the New Mexico Procurement Code (13-1-28, et. seq., NMSA 1978).



FURTHER, AFFIANT SAYETH NOT.

\_\_\_\_\_  
NAME

Subscribed and sworn to before me by \_\_\_\_\_ (name of former employee) this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

\_\_\_\_\_

Terms of the Conflict of Interest Affidavit are inapplicable.

# **APPENDIX F**

## **REFERENCE QUESTIONNAIRE**

Sandoval County, as a part of the RFP process, requires proposing vendors to submit a minimum of three (3) business references as required within this document. The purpose of these references is to document the experience relevant to the scope of work and provide assistance in the evaluation process.

The proposing vendor is required to send the following reference form to each business reference listed. The business reference, in turn, is requested to submit the Reference Form directly to the Sandoval County Procurement Officer by the RFP submission deadline for inclusion in the evaluation process. The form and information provided will become a part of the submitted proposal. The business reference may be contacted for validation of prior experience.

**RFP# FY19-LEGAL-01**  
**REFERENCE QUESTIONNAIRE**  
**FOR:**

---

(Name of company requesting reference)

This form is being submitted to your company for completion as a business reference for the company listed above. This form is to be returned for the Sandoval County Public Works via **facsimile** or **e-mail** at:

Name: Trish Greene, Senior Procurement Specialist  
Sandoval County Finance Department  
Address: 1500 Idalia Road, Building D  
Bernalillo, NM 87004

Telephone: 505-404-5873  
Fax: 505-867-7605  
Email: tgreene@sandovalcountynm.gov

Please return no later than **October 25, 2018** and **must not** be returned to the company requesting the reference.

For questions or concerns regarding this form, please contact the Sandoval County Procurement Officer listed above. When contacting us, please be sure to include the Request for Proposal number listed at the top of this page.

**CONFIDENTIAL INFORMATION WHEN COMPLETED**

<b>Company providing reference:</b>	
<b>Contact name and title/position</b>	
<b>Contact telephone number</b>	
<b>Contact e-mail address</b>	

QUESTIONS:

1. In what capacity have you worked with this vendor in the past?

COMMENTS:

2. How would you rate this firm's knowledge and expertise?

\_\_\_\_ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

3. How would you rate the vendor's flexibility relative to changes in the project scope and timelines?

\_\_\_\_ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

4. What is your level of satisfaction with hard-copy materials produced by the vendor?

\_\_\_\_ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

5. How would you rate the dynamics/interaction between the vendor and your staff?

\_\_\_\_ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

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

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

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

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

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

COMMENTS:

7. How satisfied are you with the products developed by the vendor?  
\_\_\_\_\_ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

8. With which aspect(s) of this vendor's services are you most satisfied?  
COMMENTS:

9. With which aspect(s) of this vendor's services are you least satisfied?  
COMMENTS:

10. Would you recommend this vendor's services to your organization again?  
COMMENTS:

**APPENDIX G**  
**RESIDENT VETERANS CERTIFICATION**

# New Mexico Preference Resident Veterans Certification

**Reminder, a copy of Resident Veterans Preference Certificate MUST be submitted with the proposal in order to ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended).**

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

**Please check one box only**

- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than \$1M allowing me the 10% preference on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.
- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$1M but less than \$5M allowing me the 8% preference on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.
- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$5M allowing me the 7% preference on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

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

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

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

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

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

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