

NEW MEXICO SPACEPORT AUTHORITY

REQUEST FOR PROPOSALS (RFP)

SPACEPORT AMERICA LEGAL SERVICES



**RFP#
20-495-P770-001957**

Release Date: November 15, 2019

Due Date: December 6, 2019

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I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The purpose of the Request for Proposal (RFP) is to solicit sealed proposals to establish a contract through competitive negotiations for the procurement of Legal Services at Spaceport America.

B. BACKGROUND INFORMATION

Spaceport America is a purpose-built commercial spaceport, which launches both vertical and horizontal takeoff spacecraft and their associated aviation support vehicles. Its infrastructure includes, in addition to hangars, storage, operations facilities and vertical launch infrastructure, a 12,000-foot by 200-foot runway built to support horizontal space launches and private use aviation. Although the primary and ultimate purpose of the Spaceport's runway is to service horizontal launches, it is also intended to function as a standard runway for aircraft arriving or departing on spaceport-related business.

Spaceport America is comprised on 18,461.45 acres located in south-central New Mexico about 45 miles north of Las Cruces and 30 miles southeast of Truth or Consequences, immediately to the east of White Sands Missile Range (WSMR).

C. SCOPE OF PROCUREMENT

This Contract will be for Legal Services for Spaceport America. The work shall be further defined in approved Task Authorizations becoming part of the Time and Materials type contract. This will be a four (4) year contract expected to begin on or about January 1, 2020. The Agency reserves the right to make multiple awards if this is deemed in the best interests of the Agency with the Agency being the sole judge thereof.

The detailed scope of work is included in **APPENDIX G** of this Request for Proposal.

D. PROCUREMENT MANAGER

1. The Procurement Manager who is responsible for the conduct of this procurement is listed below:

Name: Belinda Benavidez, Chief Procurement Officer
Address: New Mexico Spaceport Authority
4605 Research Park Circle, Ste A
Las Cruces, NM 88001
Telephone: (575) 267-8517
Belinda.benavidez@spaceportamerica.com

All deliveries of responses, including express carrier must be addressed as follows:

Belinda Benavidez
New Mexico Spaceport Authority
Spaceport Legal Services
RFP# 20-495-P770-001957
4605 Research Park Circle, Ste A
Las Cruces, NM 88001
Telephone: (575) 267-8500

2. **Any inquiries or requests** regarding this procurement should be submitted, in writing, to the Procurement Manager. Offerors may contact **ONLY** the Procurement Manager regarding this procurement. Other state employees or Evaluation Committee members do not have the authority to respond on behalf of the Procurement Manager.
3. **Protests of the solicitation or award must be delivered by mail to the Protest Manager.** As a Protest Manager has been named in this Request for Proposals, pursuant to NMSA 1978, §13-1-172, **ONLY** protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. Emailed protests will not be considered as properly submitted nor will protests delivered to the Procurement Manager be considered properly submitted. (See Paragraph II.B.11.)

E. DEFINITION OF TERMINOLOGY

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

“**Agency**” means the State Agency sponsoring the Procurement action, the New Mexico Spaceport Authority.

“**Award**” means the final execution of the contract document.

“**Business Hours**” means 8:00 AM thru 5:00 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.

“**Confidential**” means confidential financial information concerning Offeror’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act NMSA 1978, §57-3-A-1 to 57-3A-7. See NMAC 1.4.1.45. As one example, no information that could be obtained from a source outside this request for proposals can be considered confidential information.

“**Contract**” means any agreement for the procurement of items of tangible personal property, services or construction.

“**Contractor**” means any business having a contract with a state agency or local public body.

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

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

“**Electronic Version/Copy**” means a digital form consisting of text, images or both readable on computers or other electronic devices that includes all content that the Original and Hard Copy proposals contain. The digital form may be submitted using a compact disc (cd) or USB flash drive. The electronic version/copy can NOT be emailed.

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

“**Evaluation Committee Report**” means a report prepared by the Procurement Manager and the Evaluation Committee for contract award. It will contain written determinations resulting from the procurement.

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

“**Hourly Rate**” means the proposed fully loaded maximum hourly rates that include travel, per diem, fringe benefits and any overhead costs for contractor personnel, as well as subcontractor personnel if appropriate.

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

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

“**MST**” means Mountain Standard Time

“**NMSA**” refers to New Mexico Statutes Annotated.

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

“**Price Agreement**” means a definite quantity contract or indefinite quantity contract which requires the contractor to furnish items of tangible personal property, services or construction to a state agency or a local public body which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.

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

“Procuring Agency” means all State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law to entertain procurements.

“Project” means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved and project acceptance is given by the project executive sponsor.

“Redacted” means a version/copy of the proposal with the information considered confidential as defined by NMAC 1.4.1.45 and defined herein and outlined in Section II.C.8 of this RFP blacked out BUT NOT omitted or removed.

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

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

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

“Sealed” means, in terms of a non-electronic submission, that the proposal is enclosed in a package which is completely fastened in such a way that nothing can be added or removed. Open packages submitted will not be accepted except for packages that may have been damaged by the delivery service itself. The State reserves the right, however, to accept or reject packages where there may have been damage done by the delivery service itself. Whether a package has been damaged by the delivery service or left unfastened and should or should not be accepted is a determination to be made by the Procurement Manager. By submitting a proposal, the Offeror agrees to and concurs with this process and accepts the determination of the Procurement Manager in such cases.

“SPD” means State Purchasing Division of the New Mexico State General Services Department.

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

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

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

“**State Purchasing Agent**” means the director of the purchasing division of the general services department.

“**Statement of Concurrence**” means an affirmative statement from the Offeror to the required specification agreeing to comply and concur with the stated requirement(s). This statement shall be included in Offerors proposal. (E.g. “We concur”, “Understands and Complies”, “Comply”, “Will Comply if Applicable” etc.)

“**Unredacted**” means a version/copy of the proposal containing all complete information including any that the Offeror would otherwise consider confidential, such copy for use only for the purposes of evaluation.

“**Written**” means typewritten on standard 8 ½ x 11-inch paper. Larger paper is permissible for charts, spreadsheets, etc.

F. PROCUREMENT LIBRARY

A procurement library has been established. Offerors are encouraged to review the material contained in the Procurement Library by selecting the link provided in the electronic version of this document through your own internet connection or by contacting the Procurement Manager and scheduling an appointment. The library contains information listed below:

Procurement Regulations:

<https://www.generalservices.state.nm.us/statepurchasing/>

Request for Proposal and RFP Instructions:

Spaceport America website: <https://spaceportamerica.com/business/#rfp>

II. CONDITIONS GOVERNING THE PROCUREMENT

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

A. SEQUENCE OF EVENTS

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

Action	Responsible Party	Due Date
1. Issue RFP	Agency	Friday, November 15, 2019
2. Acknowledgment of Receipt	Potential Offerors	Monday, November 25, 2019
3. Deadline to Submit Questions	Potential Offerors	Monday, November 25, 2019 3:00 PM MST
4. Response to Written Questions	Procurement Manager	Wednesday, November 27, 2019

Action	Responsible Party	Due Date
5. Submission of Proposal/ Completed Organizational References Due	Potential Offerors	Friday, December 6, 2019 3:00 PM MST
6. Proposal Evaluation	Evaluation Committee	December 6 - 13, 2019
7. Selection of Finalists	Evaluation Committee	Friday, December 13, 2019
8. Best and Final Offers	Finalist Offerors	Friday, December 20, 2019
9. Finalize Contractual Agreements	Agency/Finalist Offerors	Friday, December 20, 2019
10. Contract Awards	Agency/Finalist Offerors	Tuesday, December 31, 2019
11. Protest Deadline	Agency	Wednesday, January 15, 2020

B. EXPLANATION OF EVENTS

The following paragraphs describe the activities listed in the sequence of events shown in Section II.A., above.

1. Issuance of RFP

This RFP is being issued on behalf of the New Mexico State Spaceport Authority on the date indicated in Section II.A. Sequence of Events.

2. Acknowledgement of Receipt

Potential Offerors **must EMAIL** the **APPENDIX A** "Acknowledgement of Receipt of Request for Proposals Form" that accompanies this document to the Procurement Manager at Belinda.benavidez@spaceportamerica.com, to have their organization placed on the procurement distribution list. The form should be signed by an authorized representative of the organization, dated and returned to the Procurement Manager by 3:00 PM MST on the date indicated in Section II.A. Sequence of Events.

The procurement distribution list will be used for the distribution of written responses to questions. Failure to return the Acknowledgement of Receipt form shall constitute a presumption of receipt and rejection of the RFP, and the potential Offeror's organization name shall not appear on the distribution list.

3. Deadline to Submit Written Questions

Potential Offerors may submit written questions to the Procurement Manager as to the intent or clarity of this RFP until 3:00 PM MST as indicated in the sequence of events. All written questions must be addressed to the Procurement Manager as declared in Section I.D. Questions shall be clearly labeled and shall cite the Section(s) in the RFP or other document which form the basis of the question.

4. Response to Written Questions

Written responses to written questions will be distributed as indicated in the Sequence of Events to all potential Offerors whose organization name appears on the procurement distribution list. An e-mail copy will be sent to all Offerors that provide Acknowledgement

of Receipt Forms described in II.B.2 before the deadline. Additional copies will be posted to: <https://www.spaceportamerica.com/business/#rfp>.

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 PM MST ON THE DATE INDICATED IN SECTION II.A. SEQUENCE OF EVENTS. 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.D. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the **Spaceport America Legal Services RFP# 20-495-P770-001957**. Proposals submitted by facsimile, or other electronic means will not be accepted.

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

6. Proposal Evaluation

An Evaluation Committee will perform the evaluation of proposals. This process will take place as indicated in the sequence of events, depending upon the number of proposals received. 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. However, proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors.

7. Selection of Finalists

The Evaluation Committee will select, and the Procurement Manager will notify the finalist Offerors as per schedule Section II.A. Sequence of Events or as soon as possible.

8. Best and Final Offers

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers by as per schedule Section II.A., Sequence of Events or as soon as possible.

9. Finalize Contractual Agreements

Any Contractual agreement(s) resulting from this RFP will be finalized with the most advantageous Offeror(s) as per schedule Section II.A., Sequence of Events or as soon thereafter as possible. This date is subject to change at the discretion of the Agency Procurement office. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror in the time specified, the State reserves the right to

finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process.

10. Contract Awards

After review of the Evaluation Committee Report and the signed contractual agreement, the Agency Procurement office will award as per the schedule in Section II.A., Sequence of Events or as soon as possible thereafter. This date is subject to change at the discretion of the Agency Procurement office.

The contract shall be awarded to the Offeror (or Offerors) whose proposals are most advantageous to the State of New Mexico and the New Mexico Spaceport Authority, taking into consideration the evaluation factors set forth in this RFP. The most advantageous proposal may or may not have received the most points. The award is subject to appropriate Department and State approval.

11. Protest Deadline

Any protest by an Offeror must be timely and in conformance with NMSA 1978, § 13-1-172 and applicable procurement regulations. As a Protest Manager has been named in this Request for Proposals, pursuant to NMSA 1978, §13-1-172, ONLY protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. The fifteen (15) calendar day protest period shall begin on the day following the award of contracts and will end at 5:00 pm MST on the 15th day. Protests must be written and must include the name and address of the protestor and the request for proposal number. It must also contain a statement of the grounds for protest including appropriate supporting exhibits and it must specify the ruling requested from the party listed below. The protest must be delivered to:

Zach DeGregorio, Chief Financial Officer
New Mexico Spaceport Authority
4605 Research Park Circle, Ste A
Las Cruces, NM 88001

Protests received after the deadline will not be accepted.

C. GENERAL REQUIREMENTS

1. Acceptance of Conditions Governing the Procurement

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

2. Incurring Cost

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

Offeror. Any cost incurred by the Offeror for set up and demonstration of the proposed equipment and/or system shall be borne solely by the Offeror.

3. Prime Contractor Responsibility

Any contractual agreement that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of all requirements of the contractual agreement with a state agency which may derive from this RFP. The state agency entering into a contractual agreement with a vendor will make payments to only the prime contractor.

4. Subcontractors/Consent

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

5. Amended Proposals

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

6. Offeror's Right to Withdraw Proposal

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

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

7. Proposal Offer Firm

Responses to this RFP, including proposal prices for services, will be considered firm for one hundred twenty (120) days after the due date for receipt of proposals or ninety (90) days after the due date for the receipt of a best and final offer, if the Offeror is invited or required to submit one.

8. Disclosure of Proposal Contents

Proposals will be kept confidential until negotiations and the award are completed by the Agency. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for material that is clearly marked proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the potential Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements:

- a. 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.
- b. Confidential data is restricted to:
 - 1) Confidential financial information concerning the Offeror's organization; and
 - 2) Data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, NMSA 1978, §57-3A-1 to 57-3A-7.
 - 3) PLEASE NOTE: The price of products offered or the cost of services proposed **shall not be designated** as proprietary or confidential information.

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

9. No Obligation

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

10. Termination

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

11. Sufficient Appropriation

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

12. Legal Review

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

13. Governing Law

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

14. Basis for Proposal

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

15. Contract Terms and Conditions

The contract between an agency and a contractor will follow the format specified by the Agency and contain the terms and conditions set forth in the Sample Contract **APPENDIX C**. However, the contracting agency reserves the right to negotiate provisions in addition to those contained in this RFP (Sample Contract) with any Offeror. The contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal will be incorporated into and become part of any resultant contract.

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

Should an Offeror object to any of the terms and conditions as set forth in the RFP Sample Contract (**APPENDIX C**) strongly enough to propose alternate terms and conditions in spite of the above, the Offeror must propose **specific** alternative language. The Agency may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions of the Sample Contract are not acceptable to the Agency and will result in disqualification of the Offeror's proposal.

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

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

16. Offeror's Terms and Conditions

Offerors must submit with the proposal a complete set of any additional terms and conditions they expect to have included in a contract negotiated with the Agency. Please see Section II.C.15 for requirements.

17. Contract Deviations

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

18. Offeror Qualifications

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

19. Right to Waive Minor Irregularities

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

20. Change in Contractor Representatives

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

21. Notice of Penalties

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

22. Agency Rights

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

23. Right to Publish

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

24. Ownership of Proposals

All documents submitted in response to the RFP shall become property of the State of New Mexico.

25. Confidentiality

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

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

26. Electronic Mail Address Required

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail address to receive this correspondence. (See also Section II.B.4, Response to Written Questions).

27. Use of Electronic Versions of this RFP

This RFP is being made available by electronic means. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the agency, the Offeror acknowledges that the version maintained by the agency shall govern. Please refer to: <https://www.spaceportamerica.com/business/#rfp>.

28. New Mexico Employees Health Coverage

- a. If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Offeror must agree to have in place, and agree to maintain for the term of the contract, health insurance for those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
- b. Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.
- c. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information:
<http://www.insurenewmexico.state.nm.us/>
- d. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); these requirements shall apply the first day of the second month after the Offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

29. Campaign Contribution Disclosure Form

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

30. Letter of Transmittal

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

- a. Identify the submitting business entity.
- b. Identify the name, title, telephone, and e-mail address of the person authorized by the Offeror organization to contractually obligate the business entity providing the Offer.
- c. Identify the name, title, telephone, and e-mail address of the person authorized to negotiate the contract on behalf of the organization (if different than (2) above).
- d. Identify the names, titles, telephone, and e-mail addresses of persons to be contacted for clarification/questions regarding proposal content.
- e. Identify sub-contractors (if any) anticipated to be utilized in the performance of any resultant contract award.
- f. Describe the relationship with any other entity which will be used in the performance of this awarded contract.
- g. Identify the following with a check mark and signature where required:
 - a. **Explicitly** indicate acceptance of the Conditions Governing the Procurement stated in Section II.C.1.;
 - b. **Explicitly** indicate acceptance of Section V of this RFP; and
 - c. Acknowledge receipt of any and all amendments to this RFP.
- h. Be signed by the person identified in paragraph 2 above.

31. Pay Equity Reporting Requirements

- a. If the Offeror has ten (10) or more employees OR eight (8) or more employees in the same job classification, Offeror must complete and submit the required reporting form (PE10-249) if they are awarded a contract. Out-of-state Contractors that have no facilities and no employees working in New Mexico are exempt if the contract is directly with the out-of-state contractor and fulfilled directly by the out-of-state contractor, and not passed through a local vendor.
- b. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, Offeror must also agree to complete and submit the required form annually within thirty (30) calendar days of the annual bid or proposal submittal anniversary date and, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract.
- c. Should Offeror not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, Offeror must agree to provide the required report within ninety (90) calendar days of meeting or exceeding the size requirement.
- d. Offeror must also agree to levy these reporting requirements on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Offeror must further agree that, should one or more subcontractor not meet the

size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, offer will submit the required report, for each such subcontractor, within ninety (90) calendar days of that subcontractor meeting or exceeding the size requirement.

32. Disclosure Regarding Responsibility

- a. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any state agency or local public body for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company:
 - 1) Is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body.
 - 2) Has, within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:
 - a) the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract;
 - b) violation of Federal or state antitrust statutes related to the submission of offers; or,
 - c) the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property.
 - 3) Is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure.
 - 4) Has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply:
 - a) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
 - b) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
 - c) Have within a three-year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body.

- b. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.
- c. The Contractor shall provide immediate written notice to the State Purchasing Agent or other party to this Agreement if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.
- d. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will render the Offeror nonresponsive.
- e. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.
- f. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the State Purchasing Agent or other party to this Agreement. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the State Purchasing Agent or Central Purchasing Officer may terminate the involved contract for cause. Still further the State Purchasing Agent or Central Purchasing Officer may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the State Purchasing Agent or Central Purchasing Officer.

33. New Mexico Preferences

To ensure adequate consideration and application of NMSA 1978, §13-1-21 (as amended), Offerors must include a copy of their preference certificate with their proposal. Certificates for preferences must be obtained through the New Mexico Department of Taxation & Revenue:

<http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx>

a. New Mexico Business Preference

A copy of the certification must accompany your proposal.

b. New Mexico Resident Veterans Business Preference

A copy of the certification must accompany your proposal.

An agency shall not award a business both a resident business preference and a resident veteran business preference.

The New Mexico Preferences shall not apply when the expenditures for this RFP include federal funds.

III. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

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

B. NUMBER OF COPIES

Hard Copy Responses - Offeror's proposal must be clearly labeled and numbered and indexed as outlined in **Section III.C. Proposal Format**. Proposals must be submitted as outlined below. The original copy shall be clearly marked as such on the front of the binder. Each portion of the proposal (technical/cost) must be submitted in separate binders and must be prominently displayed on the front cover. Envelopes, packages or boxes containing the original and the copies must be clearly labeled and submitted in a sealed envelope, package, or box.

Offerors should deliver:

1. **Technical Proposal** – One (1) ORIGINAL and four (4) HARD COPIES; and one (1) ELECTRONIC copy of the proposal containing **ONLY** the Technical Proposal. The hard copy ORIGINAL and COPIES shall be in separate labeled binders. **The electronic copy must be submitted as a virus-free USB and CANNOT be emailed.**
 - a) If Offeror's proposal contains confidential information, as defined in Section I.E. and detailed in Section II.C.8, Offeror **must** submit:
 - all of the requisite proposal identified in Section III.B.1.a) above as **unredacted** versions, for evaluation purposes; and
 - ONE (1) **redacted** HARD COPY version and ONE (1) **redacted** electronic version (information blacked out and not omitted or removed) for the public file.
2. **Cost Proposal** – One (1) ORIGINAL and one (1) HARD COPY; and one (1) ELECTRONIC copy of the proposal containing **ONLY** the Cost Proposal. The hard copy ORIGINAL and COPY shall be in separate labeled binders. **The electronic copy must be submitted as a virus-free USB and CANNOT be emailed.**

The ORIGINAL, COPY and ELECTRONIC versions of the Technical Proposal and Cost Proposal information **must** be identical. In the event of a conflict between versions of the submitted proposal, the ORIGINAL hard copy shall govern.

Any proposal that does not adhere to the requirements of this Section and **Section III.C.1 Proposal Content and Organization**, may be deemed non-responsive and rejected on that basis.

C. PROPOSAL FORMAT

All proposals must be submitted as follows:

Hard copies must be typewritten on standard 8 ½ x 11-inch paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within binders with tabs delineating each section.

Organization of folders/envelopes for hard copy proposals and electronic copy proposals:

Proposal Content and Organization - Direct reference to pre-prepared or promotional material may be used if referenced and clearly marked. Promotional material should be minimal. The proposal must be organized and indexed in the following format and must contain, at a minimum, all listed items in the sequence indicated.

Technical Proposal (Binder 1):

- A. Signed Letter of Transmittal
- B. Signed Campaign Contribution Form
- C. Table of Contents
- D. Proposal Summary (Optional)
- E. Response to Contract Terms and Conditions
- F. Offeror's Additional Terms and Conditions
- G. Response to Specifications (**except cost information which shall ONLY be included in Cost Proposal/Binder 2**)
 1. Organizational Experience
 2. Organizational References
 3. Resumes
 4. New Mexico Preferences (if any)
- H. Other Supporting Material (if applicable)

Cost Proposal (Binder 2):

- A. Completed Cost Response Form (**Do NOT include any cost information in the Technical Proposal**)

Within each section of the proposal, Offerors should address the items in the order indicated above. All forms provided in this RFP must be thoroughly completed and included in the appropriate section of the proposal. All discussion of proposed costs, rates or expenses must occur only in **Binder 2** on the cost response form.

The optional Proposal Summary may be included by potential Offerors to provide the Evaluation Committee with an overview 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. Do **NOT** include any cost information in the proposal summary.

IV. SPECIFICATIONS

Offerors should respond in the form of a thorough narrative to each specification, unless otherwise instructed. The narratives, including required supporting materials will be evaluated and awarded points accordingly.

A. DETAILED SCOPE OF WORK

See APPENDIX G.

B. TECHNICAL SPECIFICATIONS

1. Organizational Experience

Summary Statement. Offerors must submit a summary statement of relevant legal experience obtained in the last five (5) years. The narrative in response to this factor must thoroughly describe the Offeror's experience with providing legal services in the state of New Mexico. Offerors should describe with more specificity any experience in the following practice areas: contract drafting and negotiation, international business transactions, drafting memoranda of agreement, litigation, arbitration, administrative hearings, government finance law, public bonds, water law, environmental law, construction law, landlord/tenant law, employment law, civil rights, public utility law, intellectual property law, entertainment law, and other legal services and representations of the new Mexico Spaceport Authority.

In addition to the summary statement, the Offeror shall also provide the following information (referencing the subsections in sequence) to evidence the Offeror's experience in delivering services such as those sought under this RFP:

- a) **Experience.** A brief statement of **how long** the Offeror has been performing the services sought under this RFP.
- b) **Results.** The outcomes achieved by the performance of these services.
- c) **Relevance.** Why the Offeror believes these services constitute **relevant** experience for representing the New Mexico Spaceport Authority.
- d) **Client List.** A brief list of clients for whom the Offeror has performed similar legal services.
- e) **Performance Measures.** A brief description of how the Offeror will achieve the performance measures of timeliness of deliverables, responsiveness to client communications, and efficient utilization of paralegals and other cost-effective personnel.

2. Organizational References

Points will be awarded based upon an evaluation of the responses to a series of questions as per **APPENDIX F**. Points will be awarded for each individual response up to 1/3 of the total points for this category. Lack of a response will be awarded zero (0) points.

Offerors should provide a minimum of three (3) references from similar projects performed for private, state or large local government clients within the last three years. **Offerors are required to submit APPENDIX F, Organization Reference Questionnaire, to the business references they list. The business references must submit the completed Reference Form directly to the designee described in Section I.D.** It is the Offeror's responsibility to ensure the completed forms are received on or before 3:00 PM MST on the date for Submission of Proposals (See Section II.A.), for inclusion in the evaluation process.

Organizational References that are not received or are not complete, may adversely affect the Offeror's score in the evaluation process. The Evaluation Committee may contact any or all business references for validation of information submitted. If this step is taken, the Procurement Manager and the Evaluation Committee must all be together on a conference call with the submitted reference so that the Procurement Manager and all members of the Evaluation Committee receive the same information. Additionally, the Agency reserves the right to consider any and all information available to it (outside of the Business Reference information required herein), in its evaluation of Offeror responsibility per Section II.C.18.

Offerors shall submit the following Business Reference information as part of Offer:

- a) Client name;
- b) Project title;
- c) Project description;
- d) Project dates (starting and ending);
- e) Technical environment (i.e., special equipment, software, or tools that were used in the course of the engagement);
- f) Staff assigned to reference engagement that will be designated for work per this RFP; and
- g) Client project manager name, telephone number, fax number and e-mail address.

3. Resumes

The proposal shall include detailed resumes of key team members who will work on the project if awarded. Key team members are the top two (2) staff members who will initially provide the most support on this contract. These two (2) resumes should reflect the level of expertise the Offeror expects to provide under this contract for the duration. Resumes must include education, certifications, degrees, licenses, work experience including the time period at each position, and a description of work performed in each position.

C. BUSINESS SPECIFICATIONS

1. Letter of Transmittal Form

The Offeror's proposal **must** be accompanied by the Letter of Transmittal Form located in **APPENDIX E**. The form **must** be completed and must be signed by the person authorized to obligate the company. **Failure to respond to ALL items, as indicated in Section II.C.30 and APPENDIX E, and return a signed, unaltered form will result in Offeror's disqualification.**

2. Campaign Contribution Disclosure Form

The Offeror must complete an unaltered Campaign Contribution Disclosure Form and submit a signed copy with the Offeror's proposal (See **APPENDIX B**). This must be accomplished whether or not an applicable contribution has been made. **Failure to complete and return the signed, unaltered form will result in Offeror's disqualification.**

3. Cost

Offerors must complete the Cost Response Form in **APPENDIX D**.

4. 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.

V. EVALUATION

A. EVALUATION POINT SUMMARY

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

Table 1. Evaluation Point Summary

Factors – correspond to Sections IV.B and IV.C.	Points Available
B. Technical Specifications	
B.1. Organizational Experience	400
B.2. Organizational References	90
B.3. Resumes	210
C. Business Specifications	
C.1. Letter of Transmittal	Pass/Fail
C.2. Signed Campaign Contribution Form	Pass/Fail
C.3. Cost	300
TOTAL	1,000 points
C.4.A. New Mexico Preference - Resident Vendor Points per Section IV.C.4., or	50

C.4.B. New Mexico Preference - Resident Veterans Points per Section IV.C.4.	100
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The Agency shall, in its sole discretion, have the right to obtain, from any and all sources, information concerning an Offeror which is deemed pertinent to the RFP and to consider such information in the evaluation of the Offeror’s proposal.

B. EVALUATION FACTORS

1. B.1 Organizational Experience (See Table 1)

Points will be awarded based on the thoroughness and clarity of the response of the engagements cited. The Evaluation Committee will weigh the relevancy, extent and magnitude of Offeror’s experience, expertise and knowledge.

2. B.2 Organizational References (See Table 1)

Points will be awarded based upon an evaluation of the responses to a series of questions as per **APPENDIX F**. Points will be awarded for each individual response up to 1/3 of the total points for this category. Lack of a response will be awarded zero (0) points. Points will be awarded based upon the perceived relevance of the work performed for the reference as compared to the scope of work and nature of this project, and upon the clarity and thoroughness of the responses. Offeror will be evaluated on the relevancy of the work performed for the reference (as compared to the Scope of Work and nature of this project), as well as references that show positive service history, successful execution of services and evidence of satisfaction by each reference. Comments provided by Organizational References will add weight and value to a recommendation during the evaluation process. Offerors are encouraged to specifically request that their Organizational References provide detailed comments.

3. B.3 Resumes

Points will be awarded based upon an evaluation of the resume detail, experience and level of expertise to be provided by the proposed Key Team Members.

4. C.1 Letter of Transmittal (See Table 1)

Pass/Fail only. No points assigned.

5. C.2 Campaign Contribution Disclosure Form (See Table 1)

Pass/Fail only. No points assigned.

6. C.3 Cost (See Table 1)

The evaluation of each Offeror’s cost proposal will be conducted using the following formula:

$$\frac{\text{Lowest Responsive Offer Bid}}{\text{This Offeror’s Bid}} \times \text{Available Award Points}$$

“This Offeror’s Bid” from the Cost Response Form in **APPENDIX D** will be the value used for “This Offeror’s Bid” in this formula.

7. C.4. New Mexico Preferences

Percentages will be determined based upon the point-based system outlined in NMSA 1978, §13-1-21 (as amended).

A. New Mexico Business Preference

If the Offeror has provided a copy of their Preference Certificate the Preference Points for a New Mexico Business is 5%.

B. New Mexico Resident Veterans Business Preference

If the Offeror has provided a copy of their Preference Certificate the Preference Point is 10%.

C. EVALUATION PROCESS

1. All Offeror proposals will be reviewed for compliance with the requirements and specifications stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the Offeror for clarification of the response as specified in Section II.B.6.
3. The Evaluation Committee may use other sources of to perform the evaluation as specified in Section II.C.18.
4. Responsive proposals will be evaluated on the factors in Section IV, which have been assigned a point value. The responsible Offerors with the highest scores will be selected as finalist Offerors, based upon the proposals submitted. The responsible Offerors whose proposals are most advantageous to the State taking into consideration the evaluation factors in Section IV will be recommended for award (as specified in Section II.B.10). Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

APPENDIX A - ACKNOWLEDGEMENT OF RECEIPT FORM

**REQUEST FOR PROPOSALS
LEGAL SERVICES**

RFP #: 20-495-P770-001957

ACKNOWLEDGEMENT OF RECEIPT FORM

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

The acknowledgement of receipt should be signed and emailed to the Procurement Manager at Belinda.benavidez@spaceportamerica.com no later than 3:00 PM, Monday, November 25, 2019. 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 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 Proposals.

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

APPENDIX B - CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

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

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

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

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to either statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

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

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

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

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

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

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

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 - SAMPLE CONTRACT

State of New Mexico NEW MEXICO SPACEPORT AUTHORITY

LEGAL SERVICES AGREEMENT

Agreement No. _____

THIS Agreement ("Agreement") is made by and between the State of New Mexico, **NEW MEXICO SPACEPORT AUTHORITY**, hereinafter referred to as the "Procuring Agency" and _____ hereinafter referred to as the "Contractor" and collectively referred to as the "Parties".

WHEREAS, pursuant to the Procurement Code, NMSA 1978, §13-1-28 *et. seq.* and Procurement Code Regulations, NMAC 1.4.1 *et. seq.* the Contractor has held itself out as an entity with the ability to provide the required services to implement the Scope of Work as contained herein and the Procuring Agency has selected the Contractor as the offeror most advantageous to the State of New Mexico; and

NOW, THEREFORE, THE FOLLOWING TERMS AND CONDITIONS ARE MUTUALLY AGREED BETWEEN THE PARTIES:

1. **Definitions**

A. "Agreement Administrator" means the individual appointed by the SPA to administer the Price Agreement.

B. "Business Hours" means 8:00 a.m. to 5:00 p.m. Mountain Time.

C. "ITB" means Invitation to Bid as defined in statute and rule.

D. "Local public body" means every political subdivision of the state and the agencies, instrumentalities and institutions thereof.

E. "New Mexico State Purchasing Agent" or "NMSPA" means the purchasing agent for the State of New Mexico or a designated representative. May be used interchangeably with "State Purchasing Agent" or "SPA".

F. "Price Agreement" means a definite quantity contract or indefinite quantity contract which requires the Contractor to furnish items of tangible personal property or service to the Procuring Agency which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.

G. "Procuring Agency" means any state agency or local public body that enters into an Agreement to procure products or services.

H. “Products and Services schedule” refers to the complete list of products and services offered under this Agreement and the price for each. Product and service descriptions may be amended only through a written amendment signed by all required signatories and with the prior approval of the Agreement Administrator, if any. New products and services beyond those in the original procurement (whether RFP or ITB) shall not be added to the Products and Services Schedule.

I. “RFP” means Request for Proposal as defined in statute and rule.

J. “You” and “your” refers to _____. “We,” “us” or “our” refers to the State of New Mexico, agencies, commissions, institutions, political sub-divisions and local public bodies allowed by law to participate in the Agreement and whose accounts are created under this Agreement.

2. Scope of Work

The Contractor shall perform the work as outlined in **Exhibit A**, attached hereto and incorporated herein by reference.

3. Compensation

A. Compensation Schedule. The Procuring Agency shall pay to the Contractor based upon prices in **Exhibit B** “Rate Sheet.”

Payment shall be made upon Acceptance of each Deliverable and upon the receipt and Acceptance of a detailed, certified Payment Invoice. Payment will be made to the Contractor's designated mailing address. In accordance with NMSA 1978, §13-1-158, payment shall be tendered to the Contractor within thirty (30) days of the date of written certification of Acceptance. All Payment Invoices **MUST BE** received by the Procuring Agency no later than fifteen (15) days after the termination of this Agreement. Payment Invoices received after such date **WILL NOT BE PAID**.

B. Taxes. The Contractor shall be reimbursed by the Procuring Agency for applicable New Mexico Gross Receipts Taxes, excluding interest or penalties assessed on the Contractor by any authority. **PLEASE NOTE NO PROPERTY TAX WILL BE PAID TO THE CONTRACTOR BY THE STATE**. The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the Procuring Agency harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker’s Compensation.

C. Retainage. Not Applicable – The Parties agree there is no retainage.

D. Performance Bond. Not Applicable. The Parties agree there is no Performance Bond.

4. **Term**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE STATE PURCHASING AGENT. This Agreement shall begin on the date approved by the State Purchasing Agent and shall end on _____ unless terminated pursuant to this Agreement's Termination Clause or Appropriations Clause. The Procuring Agency reserves the right to renew the Agreement through a written amendment signed by all required signatories, but in any case, the Agreement shall not exceed the total number of years allowed pursuant to NMSA 1978, §13-1-150.

5. **Termination**

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

B. Notice; Procuring Agency Opportunity to Cure.

1) Except as otherwise provided in sub-paragraph A of this Clause and the Appropriations Clause of this Agreement, the Procuring Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

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

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

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

AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

6. **Appropriations**

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

7. **Status of Contractor**

The Contractor and its agents and employees are independent contractors performing professional or general services for the Procuring Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

8. **Conflict of Interest; Governmental Conduct Act**

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

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

- 1) In accordance with NMSA 1978, §10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Procuring Agency employee while such employee was or is employed by the Procuring Agency and participating directly or indirectly in the Procuring Agency's contracting process;
- 2) This Agreement complies with NMSA 1978, §10-16-7 (A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a

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

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

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

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

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

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

D. All terms defined in the Governmental Conduct Act have the same meaning in this Agreement.

9. **Amendment**

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

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

10. **Merger**

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

11. **Penalties for Violation of Law**

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

12. **Equal Opportunity Compliance**

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

13. **Workers Compensation**

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

14. **Applicable Law**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, §38-3-1 (G). By execution of this Agreement,

Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

15. **Records and Financial Audit**

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

16. **Invalid Term or Condition**

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

17. **Enforcement of Agreement**

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

18. **Non-Collusion**

In signing this Agreement, the Contractor certifies the Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the State Purchasing Agent or agency or entity.

19. **Notices**

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

To the Procuring Agency:
Belinda Benavidez, Chief Procurement Officer
New Mexico Spaceport Authority
4605 Research Park Circle, Ste A
Las Cruces, NM 88001
Telephone: (575) 267-8517

To the Contractor:

20. **Succession**

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

21. **Headings**

Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

22. **Default/Breach**

In case of Default and/or Breach by the Contractor, for any reason whatsoever, the Procuring Agency and the State of New Mexico may procure the goods or Services from another source and hold the Contractor responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special damages and the Procuring Agency and the State of New Mexico may also seek all other remedies under the terms of this Agreement and under law or equity.

23. **Equitable Remedies**

Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the Procuring Agency irrevocable harm and that a remedy at law for such a failure would be an inadequate remedy for the Procuring Agency, and the Contractor consents to the Procuring Agency's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. Procuring Agency's rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that Procuring Agency may have under applicable law, including, but not limited to, monetary damages.

24. **New Mexico Employees Health Coverage**

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

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

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

25. **Employee Pay Equity Reporting**

Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this Agreement, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for agreements up to one (1) year in duration. If contractor has (250) or more employees, contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for agreements up to one (1) year in duration. For agreements that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual agreement anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the Agreement, whichever comes first. Should contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor agrees to provide the required report within ninety (90 days) of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this Agreement if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the Agreement. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, Contractor will submit the required report, for each such subcontractor, within ninety (90 days) of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this Clause. Contractor acknowledges that this subcontractor requirement applies even though Contractor itself may not meet the size requirement for reporting and be required to report itself.

Notwithstanding the foregoing, if this Agreement was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

26. **Indemnification**

The Contractor shall defend, indemnify and hold harmless the Procuring Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the

performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors, or agents resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has performed or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Procuring Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

27. **Default and Force Majeure**

The State reserves the right to cancel all or any part of any orders placed under this Agreement without cost to the State, if the Contractor fails to meet the provisions of this Agreement and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the State due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the State provided in this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

28. **Assignment**

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

29. **Subcontracting**

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

30. **Inspection of Plant**

The State Purchasing Agent or agency or entity that is a party to this Agreement may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this Agreement.

31. **Commercial Warranty**

The Contractor agrees that the tangible personal property or services furnished under this Agreement shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to the State and are in addition to and do not limit any rights afforded to the State by any other Clause of this Agreement or order. Contractor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

32. **Condition of Proposed Items**

Where tangible personal property is a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified.

33. **Release**

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

34. **Confidentiality**

Any Confidential Information provided to the Contractor by the Procuring Agency or, developed by the Contractor based on information provided by the Procuring Agency in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Procuring Agency. Upon termination of this Agreement, Contractor shall deliver all Confidential Information in its possession to the Procuring Agency within thirty (30) Business Days of such termination. Contractor acknowledges that failure to deliver such Confidential Information to the Procuring Agency will result in direct, special and incidental damages.

35. **Contractor Personnel**

A. **Key Personnel.** Contractor's key personnel shall not be diverted from this Agreement without the prior written approval of the Procuring Agency. Key personnel are those individuals considered by the Procuring Agency to be mandatory to the work to be performed under this Agreement. Key personnel shall be: _____.

B. **Personnel Changes.** Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification and shall be approved by the Procuring Agency. For all personnel, the Procuring Agency reserves the right to require submission of their resumes prior to approval. If the number of Contractor's personnel assigned to the Project is reduced for any reason, Contractor shall, within ten (10) Business Days of the reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to Procuring Agency approval. The Procuring Agency, in its sole discretion, may approve additional time beyond the ten (10) Business Days for replacement of personnel. The Contractor shall include status reports of its

efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the Project. The Contractor shall also make interim arrangements to assure that the Project progress is not affected by the loss of personnel. The Procuring Agency reserves the right to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the Procuring Agency, meeting the Procuring Agency's expectations.

36. **Incorporation by Reference and Precedence**

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any agency response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the SPA or Procuring Agency or entity; and (5) the Contractor's response to the request for proposals.

37. **Inspection**

If this Agreement is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

38. **Inspection of Services**

If this Agreement is for the purchase of services, the following terms shall apply.

A. Services, as used in this Clause, include services performed, workmanship, and material furnished or utilized in the performance of services.

B. The Contractor shall provide and maintain an inspection system acceptable to the State Purchasing Agent or other party to this Agreement covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the State Purchasing Agent or other party to this Agreement during the term of performance of this Agreement and for as long thereafter as the Agreement requires.

C. The State Purchasing Agent or other party to this Agreement has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The State Purchasing Agent or other party to this Agreement shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.

D. If the State Purchasing Agent or other party to this Agreement performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in Agreement price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

E. If any part of the services does not conform with the requirements of this Agreement, the State Purchasing Agent or other party to this Agreement may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in Agreement amount. When the defects in services cannot be corrected by re-performance, the State Purchasing Agent or other party to this Agreement may:

- 1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and
- 2) reduce the Agreement price to reflect the reduced value of the services performed.

F. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the State Purchasing Agent or other party to this Agreement may:

- 1) by Agreement or otherwise, perform the services and charge to the Contractor any cost incurred by the State Purchasing Agent or other party to this Agreement that is directly related to the performance of such service; or
- 2) terminate the Agreement for default.

THE PROVISIONS OF THIS CLAUSE ARE NOT EXCLUSIVE AND DO NOT WAIVE THE STATE PARTIES' TO THIS AGREEMENT OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

39. **Insurance**

If the services contemplated under this Agreement will be performed on or in State facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the State of New Mexico, General Services Department or other party to this Agreement as additional insured.

A. Workers Compensation (including accident and disease coverage) at the statutory limit. Employers liability: \$100,000.

B. Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this Agreement). Limits shall not be less than the following:

- a. Bodily Injury: \$1,000,000 per person /\$1,000,000 per occurrence.
- b. Property Damage or Combined Single Limit Coverage: \$1,000,000.
- c. Automobile Liability (including non-owned automobile coverage): \$1,000,000.
- d. Umbrella: \$1,000,000.

C. Contractor shall maintain the above insurance for the term of this Agreement and name the State of New Mexico, General Services Department or other party to this Agreement as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

40. **Arbitration**

Any controversy or claim arising between the parties shall be settled by arbitration pursuant to NMSA 1978, §44-7A-1 *et seq.*

IN WITNESS WHEREOF, the parties have executed this Agreement. The effective date is the date of approval by New Mexico General Services Department set out hereinafter.

STATE OF NEW MEXICO
NEW MEXICO SPACEPORT AUTHORITY

By: _____ Date: _____
Dan Hicks, CEO

By: _____ Date: _____
Zach DeGregorio, CFO

By: _____ Date: _____
Melissa Force, General Counsel
Certifying Legal Sufficiency

CONTRACTOR:

By: _____ Date: _____
Name/Title

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

NM TAX ID Number: _____

By: _____ Date: _____
Taxation and Revenue Department

.....

By: _____
New Mexico Spaceport Authority
Chief Procurement Officer

Date: _____

CONTRACT EXHIBITS:

EXHIBIT A – Scope of Work from the RFP

EXHIBIT B – Rate Sheet

EXHIBIT C – Statement of Confidentiality Non-Disclosure Agreement

APPENDIX D - COST RESPONSE FORM LEGAL SERVICES

Rate Sheet

Offerors must complete and submit a rate sheet in the following format. The rate sheet must identify each position that will work under this contract and their hourly rate. This rate sheet includes rates for year one (1) of the contract. These rates should **not** include taxes.

Position	Rate Year 1

Box 1: Include annual percentage increase of rates for years 2-4.

Travel shall be estimated under this contract as a reimbursable expense based on Federal GSA rates.

Purchases for goods related to the Scope of Work may be billed under this contract with written approval by the Agency (i.e. copies and shipping costs). Purchases must be listed separately on each invoice and be accompanied by receipts. Purchases will be reimbursed at cost with no markup.

Box 2: Insert gross receipts tax rate Offeror intends to bill.

Box 3: This Offeror’s Bid (insert the hourly rate of the individuals indicated in the two resumes submitted as part of this RFP. This rate should not include taxes). This Offeror’s Bid will be the average of these two rates.

Key Team Member 1

Key Team Member 2

During the contract, the successful Contractor may invoice monthly based on billable hours. No billable work may be performed unless approved in writing by the Agency.

APPENDIX E – LETTER OF TRANSMITTAL FORM

RFP#: 20-495-P770-001957 – Legal Services

Offeror Name: _____ FED ID# _____

Items #1 to #7 EACH MUST BE COMPLETED IN FULL Failure to respond to all seven items WILL RESULT IN THE DISQUALIFICATION OF THE PROPOSAL! **DO NOT LEAVE ANY FIELD BLANK!**

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-Contractors (Select one)

____ No sub-contractors 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 as required in Section II. C.1.
- 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.

Authorized Signature

_____, 2019
Date

(Must be signed by the person identified in item #2, above.)

APPENDIX F - ORGANIZATIONAL REFERENCE QUESTIONNAIRE

The State of New Mexico, as a part of the RFP process, requires Offerors to submit a minimum of three (3) business references as required within this document. The purpose of these references is to document Offeror's experience relevant to the scope of work in an effort to establish Offeror's responsibility.

Offeror 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 Procurement Manager at Belinda.benavidez@spaceportamerica.com by 3:00 PM MST, Friday, December 6, 2019, for inclusion in the evaluation process. The form and information provided will become a part of the submitted proposal. Business references provided may be contacted for validation of content provided therein.

**RFP # 20-495-P770-001957
LEGAL SERVICES
ORGANIZATIONAL REFERENCE QUESTIONNAIRE
FOR:**

(Name of Offeror)

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 to the State of New Mexico, New Mexico Spaceport Authority via e-mail to the Procurement Manager at Belinda.benavidez@spaceportamerica.com no later than **Friday, December 6, 2019**, and **must not** be returned to the company requesting the reference.

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

Company providing reference	
Contact name and title/position	
Contact telephone number	
Contact e-mail address	
Project title	
Project description	
Project dates (starting and ending)	
Technical environment for the project your providing a reference (i.e., special equipment, software, or tools that were used in the course of the engagement)	

QUESTIONS:

- 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 - SCOPE OF WORK

The scope of work shall consist of the performance of legal services and legal representation of Spaceport America in coordination with the Agency's general counsel. Services may include transactional work, drafting, regulatory notices or filings, or representations in litigation, arbitration, mediation, and administrative adjudications. Deliverables may include memoranda, documentation in support of litigation, and other activities to provide legal services to the Authority. The selected contractor agrees to sign a non-disclosure agreement as part of the awarded contract (see **APPENDIX H**).

Relevant practice areas are related to, but not limited to, contract drafting and negotiation, international business transactions, drafting memoranda of agreement, litigation, arbitration, administrative hearings, government finance law, public bonds, water law, environmental law, construction law, landlord/tenant law, employment law, civil rights, public utility law, intellectual property law, entertainment law, and other legal services and representations of the New Mexico Spaceport Authority.

Performance measures may include timeliness of deliverables, responsiveness to client communications, and efficient utilization of paralegals and other cost-effective personnel.

The contract is intended to be a Time and Materials type agreement, scheduled to begin on or about January 1, 2020, for a term of four (4) years. In no circumstance shall the contract exceed a total of four (4) years in duration. The Agency reserves the right to make multiple awards if this is deemed in the best interest of the Agency, with the Agency being the sole judge thereof.

This contract will have a ceiling of \$500,000.00 per year (including New Mexico Gross Receipts Tax). This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. If multiple contracts are awarded, the Agency will assign tasks based on best firm to perform the work at the sole discretion of the Agency. During the contract, the successful Contractor may invoice monthly based on billable hours. No billable work may be performed unless approved in writing by the Agency. Travel shall be estimated under this contract as a reimbursable expense based on Federal GSA rates. Purchases for goods related to the Scope of Work may be billed under this contract with written approval by the Agency (i.e. copies and shipping costs). Purchases must be listed separately on each invoice and be accompanied by receipts. Purchases will be reimbursed at cost with no markup.

APPENDIX H – STATEMENT OF CONFIDENTIALITY NON-DISCLOSURE AGREEMENT



New Mexico Spaceport Authority

STATEMENT OF CONFIDENTIALITY NON- DISCLOSURE AGREEMENT

The undersigned, _____, for him/herself and as an authorized agent on behalf of his/her employer (individually and collectively, "User") agrees to keep confidential all information and material provided by the New Mexico Spaceport Authority ("NMSA") or otherwise acquired by User as a result of access to NMSA premises, records or any other communications, including the discovery of any information and material relating to any prospective or existing business, client, vendor, or other party transacting business with NMSA during the period of the access granted (hereinafter, "confidential information"), excepting only such information as is already known to the public. User agrees not to release, use or disclose said confidential information except with the prior written permission of NMSA.

More specifically, due to NMSA's responsibility for activities that implicate sensitive proprietary, trade secret, identification and other confidential data of current or prospective customers, clients, tenants and other business partners, no information provided to or developed by User from any source whatsoever during the performance of this agreement shall be made available to any other individual or organization without the prior written permission of NMSA. User agrees to honor all restrictions placed on recording equipment (including cameras, phones, digital and tape recorders or any other devices capable of memorializing confidential information outside the NMSA premises), to prevent the intentional or inadvertent photographing, filming, recording or other transmission of sensitive information and activity. Any violation of those restrictions may be enforced through criminal or civil means, including any and all actions to recover any damages resulting from the disclosure of such information.

User recognizes that the disclosure of information may give rise to irreparable injury to NMSA, a client or customer of NMSA, or to the owner of such information, inadequately compensable in damages and that, accordingly, NMSA or such other party may seek and obtain injunctive relief against the breach or threatened breach of the within undertakings, in addition to any other legal remedies which may be available. These obligations shall survive the termination or cancellation of the Agreement between User and NMSA or the termination of User's employment or affiliation with any entity contracted by NMSA, even if occasioned by User's breach or wrongful termination.

(Signature)

(Title)

(Date)