

TAOS SOIL & WATER CONSERVATION DISTRICT

REQUEST FOR PROPOSALS (RFP)

**Consulting Water Program Services
RFP# 001-18-19**



Release Date: August 23, 2018

Due Date: September 13, 2018

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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 a Water Program Consultant to assist Taos Soil & Water Conservation District (the “District”) with various hydrological and related water science activities and/or evaluations as needed.

B. BACKGROUND INFORMATION

The District’s Mission is to promote the wise use of land, water and natural resources.

In order to accomplish this mission, the District gathers available technical, financial and educational resources and focuses or coordinates them so that they meet the needs of the local populace. The District is committed to a productive and sustainable environment for present and future generations.

The District’s service area consists of all lands within Taos County excluding the incorporated area of the Town of Taos. This corresponds to an area equal to 2,257 square miles or 1.4 million acres. Approximately 550,723 of which are deeded lands while 733,325 acres fall under Federal management. Some 97,144 acres are managed by the State of NM and 62,288 acres are of Tribal jurisdiction.

The current District governing body is composed of a board of seven Supervisors. Five Members of this board are elected biennially in even numbered years. Elected supervisors serve staggered 4-year terms. Additionally, two more members have been appointed by the NM Soil and Water Commission. Appointed supervisors serve 1-year terms.

The District office is located at 220 Chamisa Road in Taos, NM. Regular office hours are Monday through Friday from 8:00 a.m. to 12:00 p.m. and from 1:00 p.m. to 5:00 p.m. excluding observed legal holidays. The District telephone number is (575) 751-0584.

Regular District board meetings take place on the third Wednesday of each month in the Taos SWCD conference room. The meetings begin at 9:00 a.m.

C. SCOPE OF PROCUREMENT

- a. Assist with various hydrological and related water science activities and/or evaluations on miscellaneous District projects on an as-needed basis;

- b. Measure various water well levels as directed;
- c. Engage with local acequias (water ditches) as directed;
- d. Assist landowners with hydrological inquiries as assigned by District;
- e. Assist with various youth education programs as directed;
- f. Attend District Board meetings as requested; and
- g. Participate in the District's long-term planning and policy revisions as requested.

This procurement for Consulting Water Program Services will result in either a single or multiple awards of contracts, each with a term of up to four years. The District reserves the right to renew the contract(s) on an annual basis by mutual agreement for an additional four (4) years in which case, the term shall not exceed a total of eight (8) years in accordance with NMSA 1978 §13-1-150.

D. PROCUREMENT MANAGER

1. The District has assigned a Procurement Manager who is responsible for the conduct of this procurement whose name, address, telephone number and email address are listed below:

Name:	Tanya Duncan, CPO, Procurement Manager
Address:	Taos SWCD 220 Chamisa Road Taos, NM 87571
Telephone:	(575) 751-0584
Fax:	(575) 751-9253
Email:	tduncan@tswcd.org

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

Name:	Tanya Duncan, CPO, Procurement Manager
Reference RFP Name:	Taos SWCD RFP 001-18-19 – Water Program Consultant Services
Address:	Taos SWCD 220 Chamisa Road Taos, NM 87571

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

respond on behalf of the District. 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.

E. DEFINITION OF TERMINOLOGY

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

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

“**Business Hours**” means 8:00 AM thru 12:00 PM and 1:00 PM thru 5:00 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.

“**Close of Business**” means 5:00 PM Mountain Standard or Daylight Time, whichever is in use at that time.

“**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.

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

“**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.

“**District**” means the Taos Soil & Water Conservation District.

“**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 hourly rate that includes fringe benefits and any overhead costs for contractor personnel, as well as subcontractor personnel if appropriate. The District reimburses mileage at the current New Mexico soil & water conservation district mileage reimbursement rate for private vehicles.

“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.

“Multiple Source Award” means an award of an indefinite quantity contract for one or more similar services, items of tangible personal property or construction to more than one Offeror.

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

“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.

“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.

“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:

Request for Proposal
Addendums (if applicable)
Questions and Answers (if applicable)

<http://tswcd.org/about-tswcd/current-rfps>.

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 Dates
1. Issue RFP	District	August 23, 2018
2. Distribution List	District	Sept. 6, 2018
3. Deadline to submit Questions	Potential Offerors	Sept. 6, 2018
4. Response to Written Questions	Procurement Manager	Sept. 7, 2018
5. Submission of Proposal	Potential Offerors	Sept. 13, 2018
6. Proposal Evaluation	Evaluation Committee	Sept. 14-18, 2018
7. Finalize Contractual Agreements	District/ Finalist Offerors	Sept. 20, 2018
8. Contract Awards	District/ Finalist Offerors	Sept. 20, 2018
9. Protest Deadline	District	October 5, 2018

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 Taos Soil & Water Conservation District.

2. Distribution List

Potential Offerors should return by email the "Acknowledgement of Receipt of Request for Proposals Form" that accompanies this document, APPENDIX A, 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 email to tduncan@tswcd.org by 3:00 pm MST or MDT 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 5:00 PM MST/MDT as indicated in Section II.A, Sequence of Events. All written questions must be addressed to the Procurement Manager as declared in Section I, Paragraph 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 Section II.A, 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 Offeror's that provide Acknowledgement of Receipt Forms described in II.B.2 before the deadline. Additional copies will be posted to: <http://tswcd.org/about-tswcd/current-rfps>.

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 MOUNTAIN STANDARD TIME/DAYLIGHT TIME 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, Paragraph D1. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the **Taos SWCD RFP 001-18-19 – Consulting Water Program Services**. 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 District 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 Section II.A, 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. 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 District. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror in the time specified, the District reserves the right to finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process.

8. Contract Awards

After review of the Evaluation Committee Report and the signed contractual agreement, the District 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 District.

The contract shall be awarded to the Offeror (or Offerors) whose proposals are most advantageous to the District 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 District approval.

9. 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 15-calendar day protest period shall begin on the day following the award of contracts and will end at 5:00 pm Mountain Daylight Time 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:

Tanya Duncan, Protest Manager
Taos Soil & Water Conservation District
220 Chamisa Road
Taos, New Mexico 87571

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 the District which may derive from this RFP. The District when 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 District, before any subcontractor is used during the term of this agreement. Subcontractors must hold liability insurance for work related to the District or they must be covered by the prime contractor's insurance policy.

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 District personnel will not merge, collate, or assemble proposal materials.

6. Offeror's Rights to Withdraw Proposal

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request addressed to the Procurement Manager and signed by the Offeror'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 three hundred sixty-five (365) days after the due date for receipt of proposals.

8. Disclosure of Proposal Contents

A. Proposals will be kept confidential until negotiations and the award are completed by the District. 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:

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

- c) 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 District 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 District 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 District determines such action to be in the best interest of the District.

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 District's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

12. Legal Review

The District 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 District through the Procurement Manager or in this RFP should be used as the basis for the preparation of Offeror proposals.

15. Contract Terms and Conditions

The contract between the District and a contractor will follow the format specified by the District and contain the terms and conditions set forth in the Sample Contract Appendix C. However, the District 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 District 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 District (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 District 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 District 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 District. 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 District 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 District reserves the right to require a change in contractor representatives if the assigned representative(s) is (are) not, in the opinion of the District, adequately meeting the needs of the District.

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. District Rights

The District, 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 District written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or District 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 District.

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 District'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 District, the Offeror acknowledges that the version maintained by the District shall govern.

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://bewellnm.com>
- 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:
 - 1) **Explicitly** indicate acceptance of the Conditions Governing the Procurement stated in Section II. C.1;
 - 2) **Explicitly** indicate acceptance of Section V of this RFP; and
 - 3) Acknowledge receipt of any and all amendments to this RFP.
- h. Be signed by the person identified in para 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 District 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 District. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the District, the District may terminate the involved contract for cause. Still further the District may suspend or debar the Contractor from eligibility for future solicitations until

such time as the matter is resolved to the satisfaction of the District.

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**

B. **New Mexico Resident Veterans Business Preference**

The District 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 includes 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

1. 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/packet. Each portion of the proposal (technical/cost) must be submitted in separate binders/packets 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 bearing the following information:

Offerors should deliver:

- a) **Technical Proposals** – One (1) ORIGINAL, three (3) HARD COPIES, and one (1) electronic copy of the proposal containing ONLY the Technical Proposal; ORIGINAL and COPY shall be in separate labeled binders or packets. **The electronic copy must be submitted as a USB/CD and CANNOT be emailed.**
- i. If Offeror's proposal contains confidential information, defined in Section I.E. and detailed in Section II.C.8, Offeror **must** submit:
 - a) all of the requisite proposal identified in Section III.B.1.a above as **unredacted** versions for evaluation purposes; and
 - b) ONE (1) **redacted** HARD COPY version and ONE (1) **redacted** electronic version (information blacked out and not omitted or removed) for the public file;
- b) **Cost Proposals** – One (1) ORIGINAL, three (3) HARD COPIES, and one (1) electronic copy of the proposal containing ONLY the Cost Proposal; ORIGINAL and COPY of Cost Proposal shall be in separate labeled binders or packets from the Technical Proposals. **The electronic copy must be submitted as a USB/CD and CANNOT be emailed.**

- c) The original, hard copy and electronic copy information **must** all 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 Response Format 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/packets with tabs delineating each section.

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

1. 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/Package 1):

- A. Signed Letter of Transmittal
- B. Table of Contents
- C. Proposal Summary (Optional – **DO NOT** include any Cost information)
- D. Response to Contract Terms and Conditions
- E. Offeror’s Additional Terms and Conditions
- F. Response to Specifications (**except Cost information which shall be included in Cost Proposal-Binder/Package 2 only**)
 - a) Organizational Experience
 - b) Organizational References
 - c) Mandatory Specification

- d) Signed Campaign Contribution Form
- e) New Mexico Preferences (if applicable)

G. Other Supporting Material (if applicable)

Cost Proposal (Binder/Package 2):

A. Completed Cost Response Form

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/Package #2 on the cost response form.

The 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.

IV. SPECIFICATIONS

A. DETAILED SCOPE OF WORK

- a. Assist with various hydrological and related water science activities and/or evaluations on miscellaneous District projects on an as-needed basis;
- b. Measure various water well levels as directed;
- c. Engage with local acequias (water ditches) as directed;
- d. Assist landowners with hydrological inquiries as assigned by District;
- e. Assist with various youth education programs as directed;
- f. Attend District Board meetings as requested; and
- g. Participate in the District's long-term planning and policy revisions as requested.

B. TECHNICAL 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.

1. Organizational Experience

Offerors **must**:

- a) have documentation of successful completion of a full 4-year course of study in an accredited college or university leading to a bachelor's or higher degree in hydrology, geology or related science;
- b) provide a description of relevant experience with state government and private sector entities. The experience of all proposed subcontractors must be described. The narrative **must** thoroughly describe how the Offeror has supplied expertise for similar contracts;
- c) describe the contracts (including, but not limited to the following information: Contractor Name, Description of the contract scope, and Length of time of the contract);

2. Organizational References

Offerors should provide a minimum of three (3) references from similar projects performed for private, state or large local government clients within the last ten years. **Offerors are required to submit APPENDIX F, Organization Reference Questionnaire, to the business references they list. The business references must submit the Reference Form directly to the designee described in Sec I Paragraph D.** It is the Offeror's responsibility to ensure the completed forms are received on or before THE SAME DATE INDICATED IN SECTION II.A., SEQUENCE OF EVENTS FOR SUBMISSION OF PROPOSAL for inclusion in the evaluation process.

Organizational References that are not received or are not complete, may adversely affect the vendor'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 District 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, Para C.18.

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

- a) Client name;
- b) Project description;
- c) Project dates (starting and ending);
- d) Staff assigned to reference engagement that will be designated for work per this RFP; and
- e) Client project manager name, telephone number, fax number and e-mail address.

3. Mandatory Specifications

- a) Offeror shall provide a detailed narrative describing how it will meet or exceed the requirements set forth in Section IV.A, Detailed Scope of Work. Offeror **must** organize its response in accordance with the numbered items in Section IV.A.

- b) Offeror mandatory background requirements:
 - 1) Degree in hydrology, geology or related science;
 - 2) Experience in measuring water well levels;
 - 3) A general understanding of local acequia structure and their impacts on groundwater;
 - 4) Experience working with youth
- c) Offeror must maintain an acceptable level of liability insurance for all work performed under this procurement.

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.

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. This must be accomplished whether or not an applicable contribution has been made. (See APPENDIX B)

3. Cost

Offerors must complete the Cost Response Form in APPENDIX D. Cost will be measured by hourly rate proposed by the Offeror.

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.

Factors – correspond to section IV.B and IV C	Points Available
B. Technical Specifications	
B. 1. Qualifications, expertise & relevant experience	40
B. 2. Positive References	20
B. 3. Assignment of competent, qualified staff	15
C. Business Specifications	
C.1. Letter of Transmittal	Pass/Fail
C.2. Signed Campaign Contribution Disclosure Form	Pass/Fail
C.3. Certificate of Liability Insurance	Pass/Fail
C.4. Cost/Hourly Rate	25
TOTAL	100 points
C.5. New Mexico Preference - Resident Vendor Points per Section IV C.4	5
C.5. New Mexico Preference - Resident Veterans Points per Section IV C.4	10

Table 1: Evaluation Point Summary

B. EVALUATION FACTORS

1. B.1 Qualifications, Expertise & Relevant Experience (See Table 1)

Points will be awarded based on the thoroughness and clarity of Offeror’s organized response. The Evaluation Committee will also weigh the extent and relevancy of Offeror’s experience in the field of hydrology, geology or related science, and provided contract descriptions, as well as Offeror’s candid and well-thought-out response regarding its successes and failures.

2. B.2 Positive 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. Offeror will be evaluated on references that show positive service history, successful execution of services and evidence of satisfaction by those responses.

3. B.3 Assignment of Competent, Qualified Staff

Points will be awarded based upon Offeror's proposed staff experience and ability to provide services in a timely manner.

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 Certificate of Liability Insurance

Pass/Fail only. No points assigned.

7. C.4 Cost (See Table 1)

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

$$\frac{\text{Lowest Responsive Offeror Hourly Rate}}{\text{This Offeror's Hourly Rate}} \times \text{Available Award Points}$$

8. C.5. 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 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 their Preference Certificate the Preference Points for a New Mexico Veteran Business 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 to perform the evaluation as specified in Section II. C.18.
4. Responsive proposals will be evaluated on the factors in Section V, 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 District taking into consideration the evaluation factors in Section V will be recommended for award (as specified in Section II. B.8). 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

Water Program Consulting Services RFP# 001-18-19

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 F.

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than **5:00 PM MST/MDT on May 29, 2018**. Only potential Offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all Offeror written questions and the written responses to those questions as well as RFP amendments, if any are issued.

FIRM: _____

REPRESENTED BY: _____

TITLE: _____ PHONE NO.: _____

E-MAIL: _____ FAX NO.: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

SIGNATURE: _____ DATE: _____

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

Firm DOES / DOES NOT (circle one) intend to respond to this Request for Proposal.

Tanya Duncan, Procurement Manager
Taos Soil & Water Conservation District
220 Chamisa Road
Taos, NM 87571
Phone: (575) 751-0584
E-mail: tduncan@tswcd.org

APPENDIX B

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, a prospective contractor subject to this section shall disclose all campaign contributions given by the prospective contractor or a family member or representative of the prospective contractor to an applicable public official of the state or a local public body during the two years prior to the date on which a proposal is submitted or, in the case of a sole source or small purchase contract, the two years prior to the date on which the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor or a family member or representative of the prospective contractor to the public official exceeds two hundred fifty dollars (\$250) over the two-year period. A prospective contractor submitting a disclosure statement pursuant to this section who has not contributed to an applicable public official, whose family members have not contributed to an applicable public official or whose representatives have not contributed to an applicable public official shall make a statement that no contribution was made.

A prospective contractor or a family member or representative of the prospective contractor shall not give a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or during the pendency of negotiations for a sole source or small purchase contract.

Furthermore, a solicitation or proposed award for a proposed contract may be canceled pursuant to Section [13-1-181](#) NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section [13-1-182](#) NMSA 1978 if a prospective contractor fails to submit a fully completed disclosure statement pursuant to this section; or a prospective contractor or family member or representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process.

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

THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

“**Applicable public official**” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the

authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

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

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

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

“Prospective contractor” means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code [Sections [13-1-28](#) through [13-1-199](#) NMSA 1978] or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or small purchase contract.

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

Name(s) of Applicable Public Official(s) if any: _____
(Completed by State Agency or Local Public Body)

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

— OR —

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

Signature

Date

Title (Position)

APPENDIX C

SAMPLE CONTRACT

TAOS SOIL & WATER CONSERVATION DISTRICT
FOR
Water Program Consulting Services

THIS AGREEMENT is made and entered into by and between the Taos Soil & Water Conservation District, herein after referred to as the "District", and <Enter Vendor Name> herein after referred to as the "contractor."

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. Definitions

“**Authorized Purchaser**” means an individual authorized by a Participating Entity to place orders against this contract.

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

“**Business Hours**” means 8:00 AM thru 12:00 PM and 1:00 PM thru 5:00 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.

“**Close of Business**” means 5:00 PM Mountain Standard or Daylight Time, whichever is in use at that time.

“**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.

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

“**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.

“**District**” means the Taos Soil & Water Conservation District.

“**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.

“**HIPAA**” means Health Insurance Portability and Accountability Act, a 1996 Federal law that restricts access to individuals' private medical information.

“**Hourly Rate**” means the proposed fully loaded maximum hourly rates that include any overhead costs for contractor personnel, as well as subcontractor personnel if appropriate. This does not include mileage reimbursements at whatever rate is in effect for New Mexico soil & water conservation districts.

“**Individuals with Disabilities Education Act (IDEA) Part C**” means the federal law that governs the administration of early intervention to children birth to age three who have a developmental delay or disability.

“**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.

“**Multiple Source Award**” means an award of an indefinite quantity contract for one or more similar services, items of tangible personal property or construction to more than one Offeror.

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

“**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.

2. **Scope of Work**

The CONTRACTOR shall perform the following work:

- a. Assist with various hydrological and related water science activities and/or evaluations on miscellaneous District projects on an as-needed basis;
- b. Measure various water well levels as directed;
- c. Engage with local acequias (water ditches) as directed;
- d. Assist landowners with hydrological inquiries as assigned by District;
- e. Assist with various youth education programs as directed;
- f. Attend District Board meetings as requested; and
- g. Participate in the District's long-term planning and policy revisions as requested.

3. **Compensation**

Contractor will invoice the District no more than twice per month. Invoices must contain a detailed overview of time spent on each individual project.

Escalation / Reduction Clause:

In the event of a product/service cost increase, an escalation request will be reviewed by the District on an individual basis. All submitted escalation requests must include a detailed justification of the proposed hourly rate increase, which must include evidence of need.

4. Payment Provisions

All payments under this agreement are subject to the following provisions.

- A. Acceptance - In accordance with Section 13-1-158 NMSA 1978, the District shall determine if the product or services provided meet specifications. No payment shall be made for any products or services until the products or services have been accepted by the District.
- B. Payment of Invoice - Upon acceptance that the products or services have been received and accepted, payment shall be tendered to the contractor within thirty (30) days after the date of invoice. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the contractor at the rate of 1.5 % per month. Contractor may submit invoices for payment no more frequently than bi-monthly. Payment will be made to the contractor's designated mailing address or available for pick up – whichever is preferred by the Contractor. Payment on each invoice shall be due within 30 days from the date of the acceptance of the invoice. The District agrees to pay in full the balance shown on each statement, by the due date shown on said statement.
- C. Late Charges: If the District fails to pay as required above, the Contractor may assess a late fee on the unpaid balance of more than 60 days. Late fees will be assessed at a rate based upon the billing address of the District; therefore, the periodic (monthly) late fee rate shall be 1.5% and the corresponding Annual Percentage Rate for the State of New Mexico will be 18%. No late fee on new purchases will be assessed during the billing cycle when the purchase was made.

5. Term

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE DISTRICT. This Agreement shall begin on date approved by the District or <DATE>, whichever is later, and end on <DATE>. The District reserves the right to renew the contract on an annual basis by mutual agreement for an additional four (4) years in which case, the term shall not exceed a total of eight (8) years in accordance with NMSA 1978 §13-1-150.

6. Default

The District reserves the right to cancel all or any part of any orders placed under this contract without cost to the District, if the Vendor fails to meet the provisions of this contract and, except as otherwise provided herein, to hold the Vendor liable for any excess cost occasioned by the District due to the Vendor's default. The Vendor 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 Vendor; 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 District shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Vendor to meet the required delivery scheduled. The rights and remedies of the District provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this contract.

7. Termination

- A. Grounds. The District may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the District's uncured, material breach of this Agreement.
- B. Notice; District Opportunity to Cure.
1. Except as otherwise provided in Paragraphs 7.A and 17, the District shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.
 2. Contractor shall give District written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the District's material breaches of this Agreement upon which the termination is based and (ii) state what the District must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the District 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 District 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 District; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the NM State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Paragraph 17, "Appropriations", of this Agreement.

- C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the District'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 DISTRICT'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

8. 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 District 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 Paragraph 7 herein, or to agree to the reduced funding.

9. Status of Contractor

The contractor, and contractor's agents and employees, are independent contractors for the District and are not employees of the State of New Mexico. The contractor, and contractor's agents and employees, shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the District/State of New Mexico as a result of this agreement. The contractor acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.

10. 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 District.

11. Subcontracting

The contractor shall not subcontract any portion of any services to be performed under this agreement without written approval of the District. 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 District.

12. Non-Collusion

In signing this agreement, the Vendor certifies he/she has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the District.

13. Inspection of Plant

The District may inspect, at any reasonable time, during Contractor's regular business hours and upon prior written notice the part of the contractor's, or any subcontractor's plant or place of business, which is related to the performance of this contract.

14. Commercial Warranty

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

15. 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.

16. Records of Audit

During the term of this agreement and for three years thereafter, the contractor shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by the District, the State Auditor and other appropriate state and federal authorities. The District shall have the right to audit billings both before and after payment. Payment under this agreement shall not foreclose the right of the District to recover excessive or illegal payments.

17. Appropriations

The terms of this agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the District Board of Supervisors for the performance of this agreement. If sufficient appropriations and authorization are not made by the District, this agreement, and any orders placed under it, shall terminate upon written notice being given by the District to the contractor. The District's decision as to whether sufficient appropriations are available shall be accepted by the contractor and shall be final. If the District 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.

18. Release

The contractor, upon final payment of the amount due under this agreement, releases the District, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this agreement. The contractor agrees not to purport to bind the District or 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.

19. Confidentiality

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

20. Conflict of Interest

- A. The contractor warrants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with any performance required under this agreement. The contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.
- B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:
 - 1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any District employee while such employee was or is employed by the District and participating directly or indirectly in the District'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 District'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 District.
- C. Contractor's representations and warranties in Paragraphs A and B of this Paragraph 20 are material representations of fact upon which the District relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the District 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 Paragraph 20 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 Paragraph 20 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 District and notwithstanding anything in the Agreement to the contrary, the District may immediately terminate the Agreement.
- D. All terms defined in the Governmental Conduct Act have the same meaning in this Paragraph.

21. Approval of Contractor Representatives

The District reserves the right to require a change in contractor representatives if the assigned representatives are not, in the opinion of the District, serving the needs of the District adequately.

22. Scope of Agreement

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 understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this agreement.

23. Notice

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

24. Equal Opportunity Compliance

The contractor agrees to abide by all federal and state laws, 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, rules, and regulations, and executive orders of the governor of the State of New Mexico, the contractor agrees to assure that no person in the United States shall on the grounds of race, color, religion, national origin, sex, sexual preference, age or handicap, 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 to be not in compliance with these requirements during the life of this agreement, contractor agrees to take appropriate steps to correct these deficiencies.

25. Indemnification

The contractor shall hold the state and its agencies and employees harmless and shall indemnify the state and its agencies and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the contractor, its agents, officers, employees or subcontractors. The contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the District, its officers or employees.

26. New Mexico Employees Health Coverage.

- A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month

period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

- B. Contractor 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://bewellnm.com>.

27. 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.

28. Limitation of Liability

The contractor's liability to the District, for any cause whatsoever shall be limited to the purchase price paid to the contractor for the products and services that are the subject of the District's, claim. The foregoing limitation does not apply to paragraph 27 of this agreement or to damages resulting from personal injury caused by the contractor's negligence.

29. Incorporation by Reference and Precedence

This agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any District 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; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the contractor's best and final offer; and (5) the contractors response to the request for proposals.

30. 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 District.

33. Inspection of Services

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

- A. Services, as used in this Article, 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 District covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the District during the term of performance of this Agreement and for as long thereafter as the Agreement requires.
- C. The District 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 District shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.
- D. If the District 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 contract price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.
- E. If any part of the services do not conform with the requirements of this Agreement, the District may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in contract amount. When the defects in services cannot be corrected by re-performance, the District 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 contract 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 District may:

- (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the District that is directly related to the performance of such service; or
- (2) terminate the contract for default.

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

30. Insurance

Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the District as additional insured.

- A. Workers Compensation if applicable (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 contract). 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 District 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.

31. Impracticality of Performance

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

32. 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.

33. 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.

34. Patent, Copyright and Trade Secret Indemnification

A. The contractor shall defend, at its own expense, the state and its agencies against any claim that any product or service provided under this agreement infringes any patent, copyright to trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the District based upon contractor's trade secret infringement relating to any product or services provided under this agreement, the contractor agrees to reimburse the District for all costs, attorneys' fees and amount of the judgment. To qualify for such defense and or payment, the District shall:

- i. give the contractor prompt written notice within 48 hours of any claim;
- ii. allow the contractor to control the defense of settlement of the claim; and
- iii. cooperate with the contractor in a reasonable way to facilitate the defense or settlement of the claim.

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

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

35. Survival

The agreement paragraph titled "patent, copyright, trademark, and trade secret indemnification; indemnification; and limit of liability" shall survive the expiration of this

agreement. Software licenses, leases, maintenance and any other unexpired agreements that were entered into under the terms and conditions of this agreement shall survive this agreement

36. 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:
- i. is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body;
 - ii. 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;
 - iii. 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 B of this disclosure;
 - iv. 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 B of this disclosure;
 - v. 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 District 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 be grounds for immediate termination of this Agreement pursuant to the conditions set forth in Paragraph 7 of this Agreement.
- 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 District. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the District, the District may terminate the involved contract for cause. Still further the District may suspend or debar the Contractor from eligibility for future

solicitations until such time as the matter is resolved to the satisfaction of the District.

37. Notification

Either party may give written notice to the other party in accordance with the terms of this paragraph 37. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three (3) business days after being mailed.

To District: Tanya Duncan, CPO & Finance Manager

Mailing/Office address: Taos SWCD
(for express carrier 220 Chamisa Road
and hand deliveries) Taos, NM 87571
(575) 751-0584 (voice)
(575) 751-9253 (fax)
tduncan@tswcd.org

To contractor: Enter Contractors information

Either party may change its representative or address above by written notice to the other in accordance with the terms of this paragraph 38. The carrier for mail delivery and notices shall be the agent of the sender.

39. Federal Grant or Other Federally Funded Contracts.

A. Lobbying. The Contractor shall not use any funds provided under this Agreement, either directly or indirectly, for the purpose of conducting lobbying activities or hiring a lobbyist or lobbyists on its behalf at the federal, state, or local government level, as defined in the Lobbyist Regulation Act, NMSA 1978, Sections 2-11-1, *et seq.*, and applicable federal law. No federal appropriated funds can be paid or will be paid, by or on behalf of the Contractor, or any person for influencing or attempting to influence an officer or employee of any Department, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, or the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or modification of any federal contract, grant, loan, or cooperative agreement. If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any Department, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection of any applicable federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- B. **Suspension and Debarment.** For contracts that involve the expenditure of federal funds, each party represents that neither it, nor any of its management or any other employees or independent contractors who will have any involvement in the services or products supplied under this Agreement, have been excluded from participation in any government healthcare program, debarred from or under any other federal program (including but not limited to debarment under the Generic Drug Enforcement Act), or convicted of any offense defined in 42 U.S.C. Section 1320a-7, and that it, its employees, and independent contractors are not otherwise ineligible for participation in federal healthcare or education programs. Further, each party represents that it is not aware of any such pending action(s) (including criminal actions) against it or its employees or independent contractors. Each party shall notify the other party immediately upon becoming aware of any pending or final action in any of these areas.
- C. **Political Activity.** No funds hereunder shall be used for any partisan political activity or to further the election or defeat of any candidate for public office.
- D. **Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (Sept. 2013) [Federal Grant funded projects only].**
1. This Agreement and employees working on this Agreement will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908.
 2. The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.
 3. The Contractor shall insert the substance of this clause, including this paragraph (3), in all subcontracts over the simplified acquisition threshold.
- E. For contracts and subgrants that involve the expenditure of federal funds for amounts in excess of \$150,000, requires the Contractor to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- F. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)** — For contracts that involve the expenditure of federal funds, Contractors that apply or bid for an contract exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or

employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.

- G. For contracts that involve the expenditure of federal funds, Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- H. For contracts which involve the expenditure of federal funds, and under which the Contractor is considered a subrecipient, the provisions of Appendix A shall apply and are incorporated herein. The operating code of this agreement is 00000005.

40. Succession

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

41. Property

- A. Title to all property furnished by the District shall remain in the District. Title to all property acquired by the Contractor, including acquisition through lease-purchase Agreement, for the cost of which the Contractor is to be reimbursed as a direct item of cost under this Agreement shall immediately vest in the District upon delivery of such property to the Contractor. Title to other property, the costs of which is to be reimbursed to the Contractor under this Agreement, shall immediately vest in the District upon 1) issuance for use of such property in the performance of this Agreement or 2) use of such property in the performance of this Agreement or 3) reimbursement of the cost thereof by the District, whichever first occurs.
- B. Title to the District property shall not be affected or lose its identity by reason of affixation to any realty or attachment at law.
- C. The Contractor shall maintain a property inventory and administer a program of maintenance, repair, and protection of District property so as to assure its full availability and usefulness for performance under this Agreement. In the event the

Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of, or damage to District property during the period of this Agreement, it shall use the proceeds to repair or replace the District property.

IN WITNESS WHEREOF, the parties have executed this Agreement in Taos, New Mexico. The effective date is <DATE>.

TAOS SOIL & WATER CONSERVATION DISTRICT

By: _____
Authorized Signature Designee

Date: _____

CONTRACTOR:

By: _____

Title: _____

Date: _____

.....

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

NM TAX ID. Number: _____

By: _____
Taxation and Revenue Department

Date: _____

**APPENDIX D
COST RESPONSE FORM
RFP #001-17-18**

Hourly rate must be firm and must apply to all services performed under the requirements of Section IV.A, Detailed Scope of Work. In addition to the hourly rate, mileage will be reimbursed at the current New Mexico soil & water conservation district mileage reimbursement rate.

Hourly Rate: \$_____

Escalation / Reduction Clause:

In the event of a product/service cost increase, an escalation request will be reviewed by the District on an individual basis. All submitted escalation requests must include a detailed justification of the proposed cost increase, which must include evidence of need. Please be aware this measure is not intended to allow any increase in profit margin, only to compensate for an actual cost increase. Price decreases as well as increases shall apply. If vendor's prices are reduced for any reason, users shall receive the benefit of such reductions. Price increases will not be retroactive to orders already in house or backorders. Orders will be filled at the price in effect on the date of receipt of the order by the vendor.

APPENDIX E
Letter of Transmittal Form

RFP#: 001-18-19

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!

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.

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

APPENDIX F
ORGANIZATIONAL REFERENCE QUESTIONNAIRE

The District/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:

Tanya Duncan, Procurement Manager
Taos Soil & Water Conservation District
220 Chamisa Road
Taos, NM 87571
Telephone: 575-751-0584
Email: tduncan@tswcd.org

on or before **3:00 p.m. (MDT)** on **September 13, 2018** 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 # 001-17-18
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 Taos Soil & Water Conservation District via facsimile or e-mail at:

Name: Tanya Duncan, Procurement Manager
 Address: 220 Chamisa Road
 Taos, NM 87571
 Telephone: 575-751-0584
 Email: tduncan@tswcd.org

on or before **3:00 p.m. (MDT) on June 7, 2018**, and **must not** be returned to the company requesting the reference.

For questions or concerns regarding this form, please contact the District 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 description;	
Project dates (starting and ending);	

QUESTIONS:

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

COMMENTS:

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

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

COMMENTS:

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

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

COMMENTS:

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

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

COMMENTS:

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

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

COMMENTS:

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

Name: _____ Rating:

Name: _____ Rating:

Name: _____ Rating:

Name: _____ Rating:

COMMENTS:

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

COMMENTS:

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

COMMENTS:

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

COMMENTS:

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

COMMENTS: