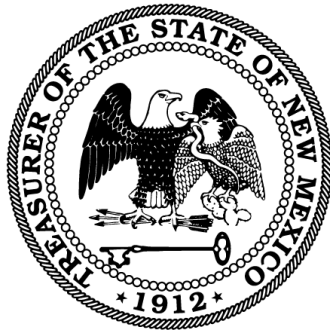


**STATE OF NEW MEXICO
STATE TREASURER'S OFFICE**



REQUEST FOR PROPOSALS

FOR

LEGAL SERVICES AS DISCLOSURE COUNSEL

RFP NO. 394-2010-DC-00302

DATE ISSUED: AUGUST 5, 2009

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I. INTRODUCTION

A. PURPOSE

The New Mexico State Treasurer is seeking the legal services of disclosure counsel for the issuance of Tax and Revenue Anticipation Notes (“TRANs”) under the authority of the New Mexico Short-Term Cash Management Act, Section 6-12A-1, *et seq.*, NMSA 1978.

The purpose of this Request for Proposals is to select a qualified Offeror to provide legal services as disclosure counsel. The services sought are more fully described in the Summary Scope of Work, Section I, Paragraph B.

B. SUMMARY SCOPE OF WORK

The Contractor, as Disclosure Counsel, will provide the following legal services to the STO:

1. The Contractor will be expected to prepare, on an ongoing basis, disclosure information in connection with the STO’s issuance of debt. In this capacity, the Contractor will be responsible for preparation of the STO’s preliminary and official statements relating to sale of tax-exempt State governmental securities. The Contractor will also be expected to work with the STO’s Bond Counsel and Financial Advisor assigned to these financings and to provide specific State disclosure information required for these financings.

2. The Contractor will be expected to work with appropriate State agencies, including the Department of Finance and Administration, Taxation and Revenue Department, the Attorney General’s Office and any other State or non-State agencies deemed necessary to ensure that all disclosure documents are updated on a timely basis. The contractor will also be expected to conduct and manage all necessary due diligence activities with respect to the STO disclosure information and will be expected to render an opinion with respect to the STO’s disclosure. The Contractor will advise and assist the STO in complying with appropriate State and Federal securities laws.

3. The Contractor shall attend meetings at the STO when the sale of and closings of tax-exempt or taxable securities are issued by the STO, if deemed necessary.

4. At no extra cost to the STO, the Contractor will provide continuing information concerning pending Federal legislation and other current developments relating to the STO’s note disclosure issues.

5. The Contractor shall cooperate with the STO and other State agencies and officials in the course of serving as Disclosure Counsel to the STO by responding to disclosure-related inquiries relating to the tax-exempt status of tax-exempt securities of the STO.

6. The Contractor shall monitor conditions addressed in any Official Statement and prepare any addendum needed prior to the delivery of any tax-exempt securities of the STO.

7. The Contractor shall assist in the preparation and the review of the publication of the Continuing Disclosure Statements for outstanding tax-exempt securities issued by the STO.

8. The Contractor shall provide any other services typically performed by a firm in that capacity.

9. The Contractor shall provide a 10(b)(5) legal opinion upon the closing of each note sale for which they serve as disclosure counsel with respect to the disclosure documentation to provide assurance to the investors as to the accuracy and timeliness of information

C. SCOPE OF PROCUREMENT

The term of the contract shall begin on the date the Department of Finance and Administration approves the contract and end on **June 30, 2010**. The STO reserves the option of renewing the initial contract annually for two additional one-year terms. In no case will the contract, including all renewals thereof, exceed a total of four years in duration.

D. PROCUREMENT MANAGER

a. The STO has designated a Procurement Manager to be responsible for the conduct of this procurement. The Procurement Manager's contact information is listed below (all deliveries should be sent to this address):

Bruce Perlman, Chief Financial Officer
New Mexico State Treasurer's Office
2019 Galisteo Street, Building K
Santa Fe NM 87504
Telephone: (505) 955-1142
Facsimile: (505) 955-1195
Email: Bruce.Pperlman@state.nm.us

Any inquiries or requests regarding this procurement should be submitted to the Procurement Manager in writing. Offerors may contact **ONLY** the Procurement Manager regarding the procurement.

b. Offeror Contact and Proposal Confidentiality:

Except as part of any interview that may be conducted during the evaluation process, until the award is made and notice given to all Offerors, no employee, agent or representative of an Offeror shall discuss

the RFP or make available or discuss an Offeror's proposal with any officer, member, employee, agent or representative of the STO other than the Procurement Manager.

Until the award is made and notice given to all Offerors, the STO will not disclose the contents of any proposal to an Offeror or potential Offeror, so as to make the contents of any offer available to competing or potential Offerors.

E. DEFINITION OF TERMINOLOGY

This section contains definitions that are used throughout this procurement document, including appropriate abbreviations.

“Agency” or “STO” means the New Mexico State Treasurer’s Office.

“Contract” means an agreement for legal services as disclosure counsel.

“Contractor” means a successful Offeror.

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

“Desirable” or “discretionary” items or factors are identified by the terms “may,” “can,” “should,” “preferably,” or “prefers.”

“DFA/CRB” means the Department of Finance and Administration Contracts Review Bureau for the State of New Mexico.

“Evaluation Committee” means a body appointed by the Agency management to perform the evaluation of Offeror proposals.

“Evaluation Committee Report” means a report prepared by the Procurement Manager and the Evaluation Committee for submission to DFA/CRB for contract award that contains all written determinations resulting from the conduct of a procurement requiring the evaluation of competitive sealed proposals.

“Mandatory” items or factors are identified by the terms “must,” “shall,” “will,” “is required,” or “are required.” Failure to meet a mandatory item or factor will result in the rejection of the Offeror’s proposal.

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

“Procurement Manager” means the person or designee authorized by the Agency to manage or administer a procurement requiring the evaluation of competitive sealed proposals.

“Request for Proposals” or “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 their financial resources, production or service facilities, personnel, service reputation, and experience are adequate to make satisfactory delivery of the services described in the proposal.

“Responsive Offer” or “Responsive Proposal” means an offer or proposal that 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.

II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule for the procurement, describes the major procurement events, and specifies general requirements for the procurement.

A. SEQUENCE OF EVENTS

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

	<u>Action</u>	<u>Responsibility</u>	<u>Date</u>
1.	Issuance of RFP	STO	August 5, 2009
2.	Distribution List Response (Appendix A Form)	Potential Offerors	August 14, 2009
3.	Deadline to Submit Written Questions	Potential Offerors	August 21, 2009
4.	Response to Written Questions/RFP Amendments	STO	August 27, 2009
5.	Submission of Proposals	Offerors	September 11, 2009
6.	Review of Proposals	Evaluation Committee	September 14, 2009 Through September 18, 2009
7.	Selection of Finalists	Evaluation Committee	September 21, 2009
8.	Selection of Contractor	Evaluation Committee	September 22, 2009
9.	Contract Negotiations	STO/Offeror	September 24, 2009
10.	Contract Award	STO	September 25, 2009
11.	Protest Deadline	Offeror	October 12, 2009

B. EXPLANATION OF EVENTS

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

1. Issuance of RFP

This RFP is being issued by the STO on **AUGUST 5, 2009**. In the interest of making it easier for Offerors to prepare responses, Offerors can download the RFP in an electronic format by accessing the STO website at: www.stonm.org. Additional copies of the RFP can be obtained from the Procurement Manager.

2. Distribution List Response

Potential Offerors should hand-deliver or return by facsimile or by registered or certified mail the “Acknowledgement of Receipt Form” that accompanies this document (see Appendix A) to have their organizations placed on the procurement distribution list. The form should be signed by an authorized representative of the organization, dated, and returned by **4:00 PM MOUNTAIN DAYLIGHT SAVING TIME ON AUGUST 14, 2009**.

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

3. Deadline to Submit Written Questions

Potential Offerors may submit written questions via electronic mail (email), facsimile, or other written form as to the intent or clarity of this RFP **until 4:00 PM MOUNTAIN DAYLIGHT TIME ON AUGUST 21, 2009**. All written questions must be addressed to the Procurement Manager.

4. Response to Written Questions/RFP Amendments

Responses to all written or email questions and any RFP amendments will be distributed by email, fax, or mail service on **AUGUST 27, 2009**, to all potential Offerors whose organizations’ names appear on the procurement distribution list. An “Acknowledgement of Receipt Form” will accompany the distribution package. The form should be signed by the Offeror’s representative, dated, and returned either hand delivered, by facsimile, or by registered or certified mail by the date indicated thereon.

Additional written or email requests for clarification of distributed answers and/or amendments must be received by the Procurement Manager **no later than 4:00 PM MOUNTAIN DAYLIGHT TIME ON SEPTEMBER 1, 2009**.

5. Submission of Proposal

All Offeror proposals must be received for review and evaluation by the Procurement Manager or his designee no later than **4:00 PM MOUNTAIN DAYLIGHT TIME ON SEPTEMBER 11, 2009**. Proposals received after this deadline will not be accepted. The date and time of receipt will be recorded on each proposal. Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section I, Paragraph D. Proposals must be labeled on the outside of the package to clearly indicate that they are in response to the Request for Proposals to provide legal services as Disclosure Counsel for the STO. Proposals submitted by facsimile or in electronic format, will not be accepted.

A public log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to Section 13-1-116 NMSA 1978, the contents of any proposal shall not be disclosed to competing Offerors prior to contract award.

6. Review of Proposals

The review of proposals will be performed by the Evaluation Committee. This process will take place on **SEPTEMBER 14, 2009, THROUGH SEPTEMBER 18, 2009**. During this time, the Procurement Manager may, at his or her option, initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. Discussions **shall not** be initiated by the Offerors.

7. Selection of Finalists

The Evaluation Committee will select and the Procurement Manager will notify the Finalist Offerors on **SEPTEMBER 21, 2009**. Only finalists will be invited to participate in the subsequent steps of the procurement. The schedule for the oral presentations will be determined at this time.

8. Selection of Contractor

The Evaluation Committee will make its recommendation to the State Treasurer on **SEPTEMBER 22, 2009**, for approval prior to entering into contract negotiations. This date is subject to change at the discretion of the STO.

9. Contract Negotiations

If approval is granted on **SEPTEMBER 22, 2009**, the contract will be negotiated with the most advantageous Offeror by **SEPTEMBER 24, 2009**. In the event that mutually agreeable terms cannot be reached within the time specified, the STO reserves the right to finalize a contract with the next most advantageous Offeror without undertaking a new procurement process.

10. Contract Award

Upon approval of the negotiated contract, the STO will award the contract on **SEPTEMBER 25, 2009**. This date is subject to change at the discretion of the STO.

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

The award is subject to appropriate state approvals.

11. Protest Deadline

Any protest by an Offeror must be timely and in conformance with Section 13-1-172 NMSA 1978 and applicable procurement regulations. The fifteen (15) day protest period for responsive Offerors shall begin on the day following the contract award and will end as of close of business on **OCTOBER 12, 2009**, unless the contract award date is changed pursuant to paragraph 10. Protests must be written and include the name and address of the protester and the RFP number. It must also contain a statement of grounds for protest including appropriate supporting exhibits, and it must specify the ruling requested from the STO. The protest must be delivered to the STO Legal Counsel:

Randilynn Lord, Legal Counsel
New Mexico State Treasurer's Office
2019 Galisteo Street, Building K
Santa Fe, NM 87504

Protests received after this deadline will not be accepted.

C. GENERAL REQUIREMENTS

This procurement will be conducted in accordance with the State of New Mexico Purchasing Division Procurement Code Regulations 1.4.1 NMAC.

1. Acceptance of Conditions Governing the Procurement

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

2. Incurring Cost

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

3. Prime Contractor Responsibility

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

4. Subcontractors

All work that may result from this procurement must be performed by the successful Offeror. Subcontracting of work is not acceptable.

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 STO will not merge, collate, or assemble proposal materials.

6. Offeror's Rights to Withdraw Proposal

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

7. Proposal Offer Firm

Responses to this RFP, including proposal prices, will be considered firm for ninety (90) days after the due date for receipt of proposals.

8. Disclosure of Proposal Contents

The proposals will be kept confidential until a contract is awarded by the STO. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for the material that is proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the Offeror has stamped or imprinted “proprietary” or “confidential” subject to the following requirements.

Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the nonconfidential portion of the proposal. Confidential data is normally restricted to confidential financial information concerning the Offeror’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, 57-3A-1 to 57-3A-7 NMSA 1978. The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.

If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, the STO Acting Counsel 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 procurement in no manner obligates the State of New Mexico or any of its agencies to the eventual rental, lease, purchase, etc., of any equipment, software, or services offered until a valid written contract is approved by the STO and other 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 STO determines such action to be in the best interest of the State of New Mexico.

11. Sufficient Appropriation

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

12. Legal Review

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

13. Governing Law

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

14. Basis for Proposal

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

15. Contract Terms and Conditions

The contract between the STO and a contractor will follow the format specified by the STO and contain the terms and conditions set forth in Section II, Paragraph C and Section VI of this RFP. However, the STO reserves the right to negotiate with a successful Offeror provisions in addition to those contained in that Agreement and in this RFP. The contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal will be incorporated into the contract.

Should an Offeror object to any of the STO's terms and conditions, as contained in Section II, Paragraph C and Section VI, that Offeror must propose specific alternative language that would be acceptable to the STO. General references to the Offeror's terms and conditions or attempts at complete substitutions are not acceptable to the STO and will result in disqualification of the Offeror's proposal.

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

16. Offeror's Terms and Conditions

Offerors must submit with the proposal a complete set of any additional terms and conditions that it expects to have included in a contract negotiated with the STO.

17. Contract Deviations

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

18. Offeror Qualifications

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

19. 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 STO reserves the right to require a change in contractor representatives if the assigned representatives are not, in the opinion of the STO, meeting its needs adequately.

21. Notice

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

22. STO Rights

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

23. Right to Publish

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

24. Ownership of Proposals

All documents submitted in response to the Request for Proposals shall become the property of STO and the State of New Mexico.

25. Proposal Discussions with Individual Offerors

The STO may conduct discussions or interviews with responsible Offerors who submit acceptable or potentially acceptable proposals. It should be clearly understood, however, that the STO reserves the right to accept proposals without conducting such discussions or negotiations. If discussions or negotiations are conducted, the STO may establish a common date for the submission of Best and Final Offers by Finalist Offerors.

26. Use of Electronic Versions of this RFP

This RFP is being made available by electronic means. If accepted by such means, the Offeror acknowledges and accepts full responsibility to ensure that no changes are made to the RFP. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the STO, the version maintained by the STO shall govern.

III. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

Each Offeror may submit only one (1) proposal.

B. NUMBER OF COPIES

Offerors shall provide the following:

Five (5) identical copies of the proposal.

Proposals shall be sent to the locations specified in Section I, Paragraph C on or before the closing date and time for receipt of proposals.

C. PROPOSAL FORMAT

All proposals must be typewritten or computer printed on standard 8½" x 11" paper.

D. PROPOSAL ORGANIZATION

Material provided in the Offeror's proposal shall follow the same order as found in Section IV, Requirements, below.

IV. REQUIREMENTS

A. LETTER OF TRANSMITTAL

The Letter of Transmittal MUST:

- a) identify the submitting organization;
- b) identify the name and title of the person authorized by the organization to contractually obligate the organization;
- c) identify the name title and telephone number of the person authorized to negotiate the contract on behalf of the organization;
- d) identify the names, titles and telephone numbers of persons to be contacted for clarification;
- e) explicitly indicate acceptance of the Conditions Governing the Procurement stated in Section II, Paragraph C.1;
- f) include a statement from the organization agreeing to provide all the services in the Summary Scope of Work and to adhere to all requirements, specifications, terms, and contract provisions set forth in this RFP;
- g) acknowledge receipt of any and all amendments to this RFP.
- h) be signed by the person authorized to contractually obligate the organization.

B. ORGANIZATION

1. Describe the organization, date founded, and ownership of your firm and any subsidiaries and affiliates relevant to your proposal together with the primary area of expertise and specific service(s) each entity will provide.
2. Describe any other business that would affect the issuance of TRANs for the State Treasurer.
3. Fully disclose and describe any relationships with financial institutions or securities brokerage firms that may affect, or appear to affect, the issuance of TRANs.
4. If you were to provide services to state-related New Mexico entities other than the State Treasurer, could the total assets be aggregated for the purposes of fee calculation?

5. Fully disclose and describe any judicial, administrative, civil, criminal or regulatory proceedings, whether formal or informal, pending or occurring within the past three (3) years involving legal services as disclosure counsel your firm, or any individual in your firm, provides involving governmental entities.
6. Identify and provide biographical information on the key person(s) taking the most active role(s) in the administration and management of your firm.
7. List your five (5) largest, or most representative, governmental clients.

C. REFERENCES

Please provide three (3) references from other governmental entities that you currently provide (or have previously provided) bond or disclosure counsel services for

D. OFFEROR'S FEE (COST PROPOSAL)

A specific fee for professional, ongoing legal services as disclosure counsel as well as a specific fee for one-time services should be included. Please fully explain the application of any fees as they relate to this proposal.

The fees for all work required under Section I. Paragraph B, Summary Scope of Work, shall be payable from the proceeds of the TRANS, only upon successful sale and closing of the note issue.

A final fee schedule may be negotiated with the Contractor prior to the execution of a contract.

In addition to the compensation, the contractor shall be reimbursed for New Mexico gross receipts taxes paid to the New Mexico Taxation and Revenue Department, if applicable, and for costs set forth in the contract that are incurred by the contractor incident to the issuance of the state's securities, including any printing, extraordinary number of reproductions, and extraordinary telephone expenses. Contractor's travel expense reimbursement shall be subject to the limitations of the Department of Finance and Administration Per-diem and Mileage Rule. A detailed statement of services and an invoice for services provided must be presented before any payment under the contract shall be made.

V. EVALUATION

The following is a summary of items where Offerors can be awarded evaluation points. These weighted factors shall be used in the evaluation of the individual Offeror responses.

A. EVALUATION POINT TABLE/SUMMARY:

	<u>Possible Points</u>
1. Demonstrated Qualifications and Experience	450
2. Technical Capabilities	100
3. Cost Proposal	250
4. Capability to provide analyses/recommendations	<u>200</u>
TOTAL	1,000

B. EVALUATION FACTORS

This section describes how each of the point factors will be evaluated.

The award of the contract for legal services as disclosure counsel shall be made to the responsible Offeror whose proposal is most advantageous to the STO taking into consideration the following weighted evaluation factors. **Please note**, however, that a serious deficiency in any one criterion may be grounds for rejection and that the listing of cost as an evaluation factor does not require the STO to select the Offeror who submits the lowest cost proposal. The STO shall have the right to obtain, from any and all sources, information concerning an Offeror that is deemed pertinent to the RFP, and to consider such information in the evaluation of the Offeror's proposal.

1. Demonstrated Qualifications and Experience: 450
 - a. Offeror's qualifications and experience with respect to preparing disclosure information and the Preliminary Official Statement and the Official Statement for the TRANs.
 - b. Work with STO and all other state agencies to prepare and update all disclosure documents on a timely basis.
 - c. Conduct and manage all due diligence activities in relation to the TRANs.
 - d. Prepare and review the Continuing Disclosure Statements for outstanding tax-exempt securities.
 - e. Provide a 10(b)(5) legal opinion upon the closing of each note sale to provide assurance to the investors as to the accuracy and timeliness of information.

2. Technical Capabilities: 100

Offeror's technical capabilities will be evaluated on the basis of the Offeror's ability to provide the necessary disclosure counsel services from the planning stages through the successful closing and funding of the TRANs.

3. Cost Proposal: 250

The cost proposal should state what the Offeror will charge for services rendered under the agreement set forth in a graduated schedule, itemized in dollars per thousand. The Offeror should provide a cost proposal specifying charges for services in the event of a negotiated sale, as well as hourly fees for one-time services.

4. Capability to Provide Analyses/Recommendations: 200

Offeror will be evaluated on capability to provide analyses and recommendations on issuance of the TRANs.

C. EVALUATION PROCESS

1. All Offeror proposals will be reviewed for compliance with the mandatory requirements 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, Paragraph B.6.
3. The Evaluation Committee may use other sources of information to perform the evaluation as specified in Section V, Paragraph B.
4. Responsive proposals will be evaluated on the factors in Section V, Paragraphs A and B, 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. Finalist Offerors who are asked or who choose to submit revised proposals for the purpose of obtaining Best and Final Offers will have their points recalculated accordingly. Points awarded from any oral presentations will be added to the previously assigned points to attain final scores. The responsible Offeror whose proposal is most advantageous to the STO, taking into consideration the evaluation factors in Section V, will be recommended for contract award. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

VI. CONTRACT PROVISIONS

In addition to the Scope of Work described in Section I, Paragraph B, and Scope of Procurement described in Section I, Paragraph C, the contractual agreement between the STO and the successful Offeror shall contain substantially the following terms and conditions.

STATE OF NEW MEXICO

NAME OF AGENCY

PROFESSIONAL SERVICES CONTRACT # _____

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **NAME OF AGENCY**, hereinafter referred to as (the "Agency") and **NAME OF CONTRACTOR**, hereinafter referred to as (the "Contractor"), and is effective as of the date set forth below upon which it is executed by the Department of Finance and Administration ("DFA")

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

A. The Contractor shall perform the following work:

B. Services will be performed (AT)(WITHIN)(LOCATION)

C. Performance Measures.

Contractor shall substantially perform the following Performance Measures:

1.

2.

(or reference an Attachment 1, see below)

2. Compensation.

A. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (AMOUNT). This amount is a maximum and not a guarantee that the work assigned to Contractor under this Agreement to be performed shall equal the amount stated herein.**

B. The Agency shall pay to the Contractor in full payment for services satisfactorily performed at the rate of _____ dollars (\$_____) per hour (OR BASED UPON DELIVERABLES, MILESTONES, BUDGET, ETC.), such compensation not to exceed (AMOUNT) (as set forth in Paragraph A) excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling (AMOUNT) shall be paid by the Agency to the Contractor. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the DFA. All invoices MUST BE received by the Agency no later than fifteen (15) days after the termination of the

Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

CHOICE – MULTI-YEAR – The Agency shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work at the rate of _____ dollars (\$ _____) in FYXX (USE FISCAL YEAR NUMBER TO DESCRIBE YEAR; DO NOT USE FY1, FY2, ETC.). The New Mexico gross receipts tax levied on the amounts payable under this Agreement in FYXX totaling (AMOUNT) shall be paid by the Agency to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (AMOUNT) in FYXX.**

(REPEAT LANGUAGE FOR EACH FISCAL YEAR COVERED BY THE AGREEMENT -- USE FISCAL YEAR NUMBER TO DESCRIBE EACH YEAR; DO NOT USE FY1, FY2, ETC.).

Payment in FYXX, FYXX, FYXX, and FYXX is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the DFA. All invoices MUST BE received by the Agency no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the Agency finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the Agency that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the agency shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE DFA. This Agreement shall terminate on **JUNE 30, 2009**, unless terminated pursuant to paragraph 4, infra, or paragraph 5. In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. Termination.

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the Agency's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the Agency is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's

liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the Agency or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE STATE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*"

B. Termination Management. Immediately upon receipt by either the Agency or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Agency; 2) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the Agency upon termination and shall be submitted to the agency as soon as practicable.

5. Appropriations.

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

6. Status of Contractor.

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

7. Assignment.

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

8. Subcontracting.

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Agency.

9. Release.

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

10. Confidentiality.

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

11. Product of Service -- Copyright.

All materials developed or acquired by the Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to the Agency no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

12. Conflict of Interest; Governmental Conduct Act.

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee or former state employee have been followed.

13. Amendment.

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

14. Merger.

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

15. Penalties for Violation of Law.

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

16. Equal Opportunity Compliance.

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor

assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

17. 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 Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

18. Workers Compensation.

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

19. Records and Financial Audit.

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

20. Indemnification.

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

21. 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:

(1) 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 no later than July 1, 2008 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed one million dollars or;

(2) 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 no later than July 1, 2009 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$500,000 dollars or;

(3) 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 no later than July 1, 2010 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://insurenemexico.state.nm.us/>.

D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); Contractor agrees 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, \$500,000 or \$1,000,000, depending on the dollar value threshold in effect at that time.

22. Invalid Term or Condition.

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

23. Enforcement of Agreement.

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

24. Notices.

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

To the Agency: [insert name, address and email].

To the Contractor: [insert name, address and email].

25. Authority.

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

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the DFA Contracts Review Bureau below.

By: _____ Date: _____
Agency

By: _____ Date: _____
Agency’s Legal Counsel –Certifying legal sufficiency

By: _____ Date: _____
Contractor

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.

ID Number: **00-000000-00-0**

By: _____ Date: _____
Taxation and Revenue Department

This Agreement has been approved by the DFA Contracts Review Bureau:

By: _____ Date: _____
DFA Contracts Review Bureau

Attachment 1

A. Scope of Work

Performance Measures

(Performance Measures should be based on the Scope of Work and must be tied to the Agency's Strategic Plan. The Plan should be referenced in the Measures and the applicable part of the Strategic Plan copied below or in an attachment. To the extent possible based on the nature of the work to be performed, the Measures should be "Output" oriented and specify an "Outcome.")

Performance Measures in Scope of Work shall contain measurable goals and objectives that are linked to the performance measures of the Agency's Strategic Plan:

Goal: To fund State working capital requirements and reduce the State's historic reliance on inter-fund borrowing and borrowing across accounts within the General Fund Portfolio.

Objective: Render advice to STO related to issuance of the TRANs, initiate the necessary due diligence with STO and other state agencies to prepare necessary disclosure documents and the POS and OS, provide the necessary legal opinion upon the closing of each note sale, participate with the working group to develop all necessary documents, complete the note sale and work through the closing of the issue and the delivery of the proceeds.

Activities: Coordinate with the working group, the plan for the TRANs sale, prepare all legal and disclosure documents necessary, render the 10(b)(5) opinion for investors, provide ongoing Continuing Disclosure documents, monitor all conditions addressed in the Official Statement, provide STO continuing information concerning pending federal legislation and other current developments, monitor conditions addressed in the Official Statement, participate in the preparation, sale and closing of the note issue and the delivery of the proceeds to the State Treasurer for deposit to the General Fund.

APPENDIX A

LEGAL SERVICES AS DISCLOSURE COUNSEL

ACKNOWLEDGEMENT OF RECEIPT FORM

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

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than **4:00 PM MOUNTAIN DAYLIGHT TIME ON AUGUST 14, 2009**. (Facsimile submissions are acceptable if the sender confirms receipt by telephone with the Procurement Manager.)

FIRM: _____

REPRESENTED BY: _____

TITLE: _____

PHONE NO.:(____)_____ FAX NO.: (____)_____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

SIGNATURE: _____ DATE: _____

E-MAIL ADDRESS _____

CIRCLE ONE:

Firm DOES/DOES NOT intend to respond to this Request for Proposals.

Return completed form to:

Bruce Perlman, Chief Financial Officer
New Mexico State Treasurer's Office
2019 Galisteo Street, Building K
Santa Fe NM 87504
Facsimile: (505) 955-1195

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

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 of the Procurement Code if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

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 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 or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or a small purchase contract.

“Representative of a prospective 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: Governor Bill Richardson
Lt. Governor Diane Denish
State Treasurer James B. Lewis

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)