

RFP No. 2005-9-ISC

Packet No. \_\_\_\_\_

**REQUEST FOR PROPOSALS  
FOR  
PROFESSIONAL ENGINEERING SERVICES**

Project Name:

**Water Projects Engineering Services RFP**

Contracting Agency:

**New Mexico Interstate Stream Commission**

**P.O. Office Box 25102**

**Santa Fe, NM 87504-5102**

**(505) 827-6161**

Date:

**September 22, 2005**

Procurement Manager:

**Mr. Lee Pease**

## NOTICE OF REQUEST FOR PROPOSALS

(AS PUBLISHED)

Qualifications-based competitive sealed proposals for professional engineering services will be received by the New Mexico Interstate Stream Commission (ISC) for RFP No. 2005-9-ISC. The ISC is requesting proposals for design and construction phase services attendant to water projects throughout the State of New Mexico.

Engineering services to be contracted under this RFP include design and construction phase services for water projects throughout the state, including but not limited to construction projects under the ISC Acequia Program. Project construction costs are expected to average between \$100,000 to \$5,000,000. Acequia construction projects range in cost from \$30,000 to no more than \$5,000,000. Offeror(s) selected for Acequia projects will demonstrate a working knowledge of acequias and the ability to work quickly and efficiently within complex acequia cultural and legal issues. Multiple selections may be made under this RFP. Work will be performed under Work Orders issued for individual projects. Rapid and cost-effective performance of engineering services and production of thorough reports of engineering evaluations, analysis, and recommended design and construction work is required. The selected engineer(s) will be expected to produce reports of inspection, analysis, recommended design and construction activities, and cost estimates within 30 days of issuance of a work order by the ISC. Fees will be based on cost schedules in the American Consulting Engineers Council of New Mexico manual for qualification-based selection.

Proposals may be mailed to the ISC offices at P.O. Box 25102, Santa Fe, NM 87504-5102, or may be hand delivered at the Bataan Memorial Building, Room 101, Santa Fe, NM 87501. In either event, proposals must be received in hand by the ISC by no later than **2:00 PM, Mountain Time, October 19, 2005**. Copies of the RFP can be obtained in person at the ISC offices in Santa Fe or will be mailed upon written request to Lee Pease, Procurement Manager, P.O. Box 25102, Santa Fe, NM 87504-5102, or telephonic request to Lee Pease at (505) 827-5803. A Pre-Proposal Conference will be held at **1:00 PM Mountain Time, October 3, 2005 in Wood Hall, 1<sup>st</sup> Floor of the Ortiz y Pino Building, 130 South Capitol, Santa Fe, New Mexico.**

The RFP may be canceled and any and all proposals may be rejected in whole or in part when it is in the best interests of the State of New Mexico and the ISC.

## **INSTRUCTIONS TO OFFERORS**

### **1. DEFINITIONS AND TERMS**

1.1 "Addendum" means a written or graphic instrument issued prior to the opening of Proposals that clarifies, corrects, or changes this RFP. Plural: Addenda.

1.2 "Successful Offeror" means the Offeror(s) awarded a Contract as a result of this RFP.

1.3 "Determination" means the written documentation of a decision of the Procurement Manager including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains (§ 13-1-52, N.M.S.A. 1978).

1.4 "Offeror" means any person or organization, legally licensed to provide professional engineering services in New Mexico, which chooses to submit a Proposal in response to this RFP.

1.5 "Procurement Manager" means the person or designee authorized by the Contracting Agency to manage or administer a procurement requiring the evaluation of Proposals.

1.6 "Project" means the inspection, analysis, identification, prioritization, design, and construction phase services for the refurbishment of acequias and other water projects and similar or related services in the State as required as defined in "PROJECT DESCRIPTION" above.

1.7 "Proposal" means a written response submitted to the Contracting Agency as requested by this RFP.

1.8 "Request for Proposals" or "RFP" means all documents, including those attached or incorporated by reference, used for soliciting Proposals (§ 13-1-81, N.M.S.A. 1978).

1.9 "Responsible Offeror" means an Offeror that submits a Proposal and that has furnished, when required, information and data to prove that its financial resources, production or service facilities, personnel, service reputation, and experience are adequate to make satisfactory delivery of the services described in the Proposal (§ 13-1-83, N.M.S.A. 1978).

1.10 "Work" means all of the work necessary for the Project as agreed between the Contracting Agency and the Successful Offeror as a result of contract negotiations pursuant to this RFP.

1.11 The terms "must", "shall", "will", "is required", or "are required", identify a mandatory item or factor. Failure to comply with a mandatory item or factor will result in the rejection of the Offeror's Proposal.

1.12 The terms "can," "may," "should," "preferably," or "prefers" identify a desirable or discretionary item or factor.

## **2. REQUEST FOR PROPOSAL DOCUMENTS**

### **2.1 Copies of Request for Proposals.**

A. A copy of this RFP, complete as of the date issued, may be obtained from the Contracting Agency at the office designated on the front cover of this RFP or as designated in the published notice of this RFP. This RFP is subject to the availability of funds to accomplish the Work.

B. A complete copy of this RFP shall be used in preparing Proposals; the Contracting Agency assumes no responsibility for errors or misinterpretations resulting from the use of an incomplete set of this RFP.

C. The Contracting Agency in making copies of this RFP available does so only for the purpose of obtaining Proposals and does not confer a license or grant for any other use.

D. A copy of this RFP shall be made available for public inspection at the office of the Contracting Agency.

### **2.2 Interpretations.**

A. All questions related to this RFP shall be submitted in writing and submitted only to the Procurement Manager. Replies will be issued by Addenda sent to all parties that timely and properly submit to the Procurement Manager a completed copy of the acknowledgment form attached hereto as Appendix B. Questions received less than five business days prior to the deadline for submitting Proposals will not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect and shall not be relied upon by Offerors.

B. Offerors should promptly notify the Procurement Manager of any ambiguity, inconsistency, or error that they may discover upon examination of this RFP.

### **2.3 Addenda.**

A. Addenda will be mailed by certified mail with return receipt requested, sent via facsimile, email, or overnight courier, or hand delivered to all who have timely and properly submitted to the Procurement Manager a completed copy of the acknowledgment form attached hereto as Appendix B.

B. Copies of Addenda will be made available for inspection at the specified office of the Contracting Agency.

C. No Addenda will be issued later than four business days prior to the date for receipt of Proposals, except an Addendum withdrawing this RFP, or one that includes postponement of the date for receipt of Proposals.

D. Each Offeror shall ascertain, prior to submitting its Proposal, that the Offeror has received all Addenda issued, and each Offeror shall acknowledge their receipt of such Addenda (if any) in their Proposal transmittal letter.

### **3. PROPOSAL SUBMITTAL PROCEDURES**

#### **3.1 Number, Form, and Style of Proposals.**

A. Offerors shall provide five copies of their Proposal to the location specified on or before the closing date and time for receipt of Proposals.

B. All Proposals must be typewritten on standard 8½" x 11" paper and bound on the left hand margin. (Foldout sheets may be up to 11" x 17".)

C. Proposals shall be a maximum of twenty-five pages (not including front cover, title page, table of contents, divider pages/tabs, index, or back cover).

D. The Proposal must be organized and indexed in the following format and must contain, as a minimum, all listed items in the sequence indicated:

- (1) Letter of transmittal;
- (2) Specialized design and technical competence;
- (3) Capacity and capability;
- (4) Past record of performance;
- (5) Familiarity with the Contracting Agency;
- (6) Work to be done in New Mexico;
- (7) Current volume of work with the Contracting Agency not 75% Complete;
- (8) Subcontractors and identification of their roles;
- (9) Resumes and hourly costs of all key personnel;
- (10) A statement that the form of contract (See 4.4 A. below) is acceptable to Offeror; and
- (11) Other supporting or resource material.

E. Any Proposal that does not adhere to this format or that does not address each specification and requirement within this RFP may be rejected.

F. Proposals will be kept confidential until a contract is awarded. At that time, all Proposals and documents pertaining to the Proposals will be open to the public, except for the material that is proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the offeror has stamped or imprinted "proprietary" or "confidential," subject to the following requirements: Proprietary or confidential data shall be readily separable from the proposal to facilitate eventual public inspection of the non-confidential portion of the proposal; confidential data is normally restricted data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, § 57-3A-1 to § 57-3A-7, N.M.S.A. 1978; and a statement that the entire Proposal is confidential, absent specific and defensible justification, will be disregarded.

G. Any cost incurred by an Offeror in preparation, transmittal, presentation of any Proposal shall be borne solely by such Offeror.

### 3.2 Subcontractors.

An Offeror shall list and state the qualifications, key personnel and costs, and intended work effort for each subcontractor the Offeror proposes to use for all subcontracted work. The Offeror is specifically advised that any person or organization to which it is proposed to award a subcontract must be acceptable to the Contracting Agency after verification by the Contracting Agency of the current eligibility status of such subcontractor, including but not limited to suspension or debarment such subcontractor by the Contracting Agency.

### 3.3 Debarred or Suspended Contractors.

A business (contractor, subcontractor, or supplier) that has either been debarred or suspended pursuant to the requirements of § 13-1-177 through § 13-1-180, N.M.S.A. 1978, shall not be permitted to do business with the Contracting Agency and shall not be considered for award of a contract during the period for which it is debarred or suspended with the Contracting Agency.

### 3.4 Submittal of Proposals.

A. Proposals shall be submitted at the time and place indicated in the Notice of RFP and shall be enclosed in an opaque sealed envelope marked with the Project title, the RFP number, the name and address of the Offeror, and, in a prominent location, the notation "SEALED PROPOSAL ENCLOSED".

B. Proposals received after the date and time for receipt of Proposals will not be considered.

C. The Offeror shall assume full responsibility for timely delivery of Proposals at the Contracting Agency's specified office, including those Proposals submitted by mail. Hand-delivered Proposals shall be submitted to the Procurement Manager or his designee and will be clocked in/time stamped at the time received, which must be prior to the time specified.

D. After the date established for receipt of Proposals, a register of Proposals will be prepared that includes the name of each Offeror and such other information as may be specified by the Procurement Manager.

E. Oral, telephonic, or electronically transmitted Proposals will not be considered.

### 3.5 Correction or Withdrawal of Proposals.

A. A Proposal containing a mistake discovered before Proposal opening may be modified or withdrawn by an Offeror prior to the date designated for receipt of Proposals by delivering written notice to the location designated in this RFP as the place where Proposals are to be received.

B. Withdrawn Proposals may be resubmitted up to the time and date designated for the receipt of Proposals, provided they are then fully in conformance with this RFP.

### 3.6 Notice of Contract Requirements Binding on Offeror.

A. In submitting a Proposal, the Offeror represents that the Offeror is familiar with the nature and extent of this RFP and with federal, state, and local requirements that affect this RFP.

B. Pursuant to § 13-1-191, N.M.S.A. 1978, reference is hereby made to the criminal laws of New Mexico (including § 30-14-1, § 30-24-2, and § 30-41-1 through § 30-41-3, N.M.S.A. 1978) that prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code (§ 13-1-28 through § 13-1-199, N.M.S.A. 1978) imposes civil and criminal penalties for its violation.

### 3.7 Rejection or Cancellation of Proposals.

This RFP may be canceled, or any or all Proposals may be rejected in whole or in part, when it is in the best interest of the Contracting Agency. A determination containing the reasons therefore shall be made part of the Project file (§ 13-1-131, N.M.S.A. 1978).

### 3.8 SEQUENCE OF EVENTS.

<b>ACTION</b>	<b>RESPONSIBILITY</b>	<b>DATE</b>
Issue RFP	Contracting Agency	September 22, 2005
Pre-Proposal Conference	Contracting Agency and Potential Offerors	October 3, 2005
Deadline to Submit Acknowledgment of Receipt (Appendix B)	Potential Offerors	October 5, 2005
Deadline to Submit Additional Written Questions	Potential Offerors	October 7, 2005
Response to Written Questions/RFP Amendments	Agency	October 12, 2005
Deadline for Submission of Proposals to Agency	Potential Offerors	October 19, 2005
Proposal Evaluation	Selection Committee	October 19 to 26
Interviews (Optional)	Selection Committee	October 26 to 30
Submission of Ranking to Interstate Stream Commission	Selection Committee and Interstate Stream Commission	One week prior to November ISC meeting (TBA)
Agency Approval of Rankings	Interstate Stream Commission	November ISC meeting (anticipated third week of November 2005)
Contract Finalization and Award	Interstate Stream Commission and Contractor	30 days after Agency approval of rankings
Protest Deadline	Offerors	15 days after award of contract

## 4. CONSIDERATION OF PROPOSALS

### 4.1 Receipt, Opening, and Recording.

A. Proposals received on time will be opened publicly or in the presence of one or more witnesses and the name of the Offeror and address will be read aloud.

B. The names of all Offerors submitting Proposals and the names of all Offerors, if any, selected for interview shall be public information. After an

award has been made, final ranking and evaluation scores for all Proposals shall become public information (§ 13-1-120, N.M.S.A. 1978). The contents of any Proposal shall not be disclosed so as to be available to competing Offerors during the negotiation process (§ 13-1-116, N.M.S.A. 1978).

#### 4.2 Proposal Evaluation.

A. Proposals shall be evaluated on the basis of demonstrated competence and qualification for the type of service required, and shall be based on the evaluation factors set forth in this RFP. For the purpose of conducting discussions, Proposals may initially be classified as: (1) acceptable; (2) potentially acceptable (that is, reasonably assured of being made acceptable); or (3) unacceptable.

B. The Contracting Agency shall have the right to waive technical irregularities in the form of the Proposal of the Offeror that do not alter the quality or quantity of the services (§ 13-1-132, N.M.S.A. 1978).

C. If an Offeror, that otherwise would have been awarded a contract, is found not to be a Responsible Offeror, a determination that the Offeror is not a Responsible Offeror, setting forth the basis of the finding, shall be prepared by the Procurement Manager. The failure of the Offeror to promptly supply information in connection with an inquiry with respect to responsibility is grounds for a determination that the Offeror is not a Responsible Offeror (§ 13-1-133, N.M.S.A. 1978). Offerors that have not been selected shall be so notified in writing within twenty-one days after an award is made (§ 13-1-120, N.M.S.A. 1978).

D. An evaluation committee composed of representatives selected by the Contracting Agency will evaluate all Proposals. The committee shall evaluate statements of qualifications and performance data submitted by at least three Offerors in regard to the particular project and may conduct interviews with and may require public presentation by all Offerors applying for selection regarding their qualifications, their approach to the Project and their ability to furnish the required services. If fewer than three Offerors have submitted a statement of qualifications for a particular project, the committee may: (1) rank in order of qualifications and submit to the Contracting Agency for award those Offerors which have submitted a statement of qualifications; or (2) recommend termination of the selection process and sending out of new notices of the proposed procurement pursuant to § 13-1-104, N.M.S.A. 1978.

#### 4.3 Offeror's Qualification Statement.

An Offeror to whom award of a Contract is under consideration shall submit, upon request, information and data to prove that their financial resources, production or service facilities, personnel, and service reputation and experience are adequate to make satisfactory delivery of the services described in this RFP (§ 13-1-82, N.M.S.A. 1978). All work shall be under the direction of the applicable design professional legally licensed and registered by the state.

#### 4.4 Negotiations (§ 13-1-122, N.M.S.A. 1978).

A. The form of contract required by the Contracting Agency which will be used for the Project and is attached to this RFP as Appendix A. Offerors must affirmatively state in their Proposals that they will enter into that form of Contract or note specific objections thereto. Substantial objections to the form of contract may cause Proposals to be classified as unacceptable.

B. The Contracting Agency's designee shall undertake contract negotiations with the highest qualified Offeror(s) for the services contemplated under this RFP at compensation determined in writing to be fair and reasonable. In making this decision, the designee shall take into account the estimated value of the services to be rendered and the scope, complexity, and professional nature of the services. Fees will be based on cost schedules in the American Consulting Engineers Council of New Mexico manual for qualification-based selection. Should the designee be unable to negotiate a satisfactory contract with the most qualified Offeror(s) at a price determined to be fair and reasonable, negotiations with those Offerors shall be formally terminated.

C. The Contracting Agency shall publicly announce the Successful Offeror(s).

#### 4.5 Execution and Approval of Contract.

The contract shall be signed by the Successful Offeror(s) and returned within an agreed upon time frame after the date of the Notice of Award. No contract shall be effective until it has been fully executed by the parties thereto and necessary state agencies.

#### 4.6 Notice of Award.

After award by the Contracting Agency, a written notice of award shall be issued by the Contracting Agency with reasonable promptness (§ 13-1-100 and § 13-1-108, N.M.S.A. 1978).

#### 4.7 Notice to Proceed.

The Contracting Agency will, when appropriate, issue a written work order as notice to proceed to the Successful Offeror(s).

### **5. POST-PROPOSAL INFORMATION**

#### 5.1 Protests.

A. Any Offeror who is aggrieved in connection with a solicitation or award of a contract may file a protest in accordance with the requirements of the Contracting Agency's Procurement Regulations and the state Procurement Code. The protest should be made in writing as soon as possible after the facts or occurrences giving rise thereto, but in no case later than fifteen calendar days after the facts or occurrences giving rise thereto (§ 13-1-172, N.M.S.A. 1978).

B. In the event of a timely protest, the Procurement Manager and the Contracting Agency shall not proceed further with the procurement unless the Procurement Manager makes a determination that the award of a contract is necessary to protect substantial interests of the Contracting Agency (§ 13-1-173, N.M.S.A. 1978).

C. The Procurement Manager or designee shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved Offeror concerning procurement. This authority shall be exercised in accordance with adopted regulations, but shall not include the authority to award money damages or attorneys' fees (§ 13-1-174, N.M.S.A. 1978).

D. The Procurement Manager or designee shall promptly issue a determination relating to the protest. The determination shall: (1) state the reasons for the action taken; and (2) inform the protestant of the right to judicial review of the determination pursuant to § 13-1-183, N.M.S.A. 1978.

E. A copy of the determination issued under § 13-1-175, N.M.S.A. 1978 shall immediately be mailed to the protestant and other Offerors involved in the procurement (§ 13-1-176, N.M.S.A. 1978).

## EVALUATION CRITERIA

Proposals must address each of the following criteria. Each Proposal may be awarded points up to the amount listed.

- |  | Points |
|--|--------|
| 1. <u>Specialized Design and Technical Competence</u><br>Specialized design and technical competence of the Offeror, including a joint venture or association, regarding the type of services required.  | 40     |
| 2. <u>Capacity and Capability</u><br>Capacity and capability of the Offeror to perform the Work, including any specialized services, within the time limitations.  | 25     |
| 3. <u>Past Record of Performance</u><br>Past record of performance on contracts with government agencies or private industry with respect to such factors as control of costs, quality of work, and ability to meet schedules.   | 20     |
| 4. <u>Familiarity with the Project</u><br>Proximity to or familiarity with the area in which the Project is located and familiarity with the types of projects anticipated.  | 10     |
| 5. <u>Work to be Done in New Mexico</u><br>The amount of design work that will be produced by a New Mexico business within this state.<br><br>[ <u>X</u> ] This criteria is not allowed for federally funded projects  | 5      |
| 6. <u>Current Volume of Work with the Contracting Agency</u><br>The volume of work previously done for the entity requesting Proposals which are not seventy-five percent complete with respect to basic professional design services [through bidding phase], with the objective of effecting an equitable distribution of contracts among qualified businesses and of assuring that the interest of the public in having available a substantial number of qualified businesses is protected; <b>provided, however, that the principle of selection of the most highly qualified businesses is not violated.</b> Offerors must indicate the volume of work they currently have underway with the Contracting Agency that is less than seventy-five percent complete. Points will be determined as follows: | 5      |

Work	Points
None	5
\$1 to \$25,000	4
25,001 to 50,000	3
50,001 to 75,000	2
75,001 to 100,000	1
100,001 or more	0

**Appendix A**  
**Professional Engineering Services RFP No. 2005-9-ISC**

STATE OF NEW MEXICO

PROFESSIONAL SERVICES CONTRACT # \_\_\_\_\_

THIS AGREEMENT is made and entered into by and between the State of New Mexico, Office of the State Engineer, hereinafter referred to as the "Agency" and \_\_\_\_\_, a \_\_\_\_\_, hereinafter referred to as the "Contractor".

RECITALS:

A. The Agency published RFP No. 2005-9-ISC, a request for proposals for Water Projects Engineering and other work (the "RFP").

B. Contractor submitted a proposal in response the RFP, which proposal was selected as the most favorable.

C. The Agency desires to obtain the professional services of Contractor leading to identification, prioritization, design, and construction phase services for the refurbishment of acequias and other water projects and similar or related Engineering and design services the Agency wishes the Contractor to perform.

D. This Agreement is for a portion of the work covered by the RFP, and the Agency and Contractor anticipate they may enter subsequent agreements pursuant to the RFP.

E. Contractor has represented and warranted to the Agency that Contractor has the necessary character, education, training, experience, and expertise to perform such services.

F. Contractor desires to provide such services and is willing to do so pursuant to the terms of this Agreement.

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. Scope of Work.

A. *Scope of Work*

The Contractor shall perform the Scope of Work as follows:

*[Each Scope of Work shall include, at a minimum, a detailed description of tasks and subtasks assigned, a detailed description of deliverables for each task and subtask, a cost for each task and subtask, and a schedule for completion of each task and subtask.]*

The "Contract Manager" will be designated by the Agency. The Contract Manager will coordinate all efforts and communications between Contractor and the Agency related to, or in furtherance of the tasks to be performed under, this Agreement. Contractor shall provide professional services on tasks assigned by the Contract Manager. Contractor will routinely advise and consult with the Contract Manager concerning duties undertaken, progress on assigned tasks, and all issues related to work assigned. Tasks may be assigned, modified, or withdrawn in the discretion of the Contract Manager. The Contract Manager will also recommend approval or rejection of deliverables and invoices.

B. *Performance Measures*

*[Performance measures will depend on the projects assigned to each Contractor and at a minimum will require that the Contractor assist the Agency to meet the portions of its Strategic Plan (set forth below) and, when applicable, assist the Agency to meet the requirements of NMSA 1987, § 72-1-2.4 (2002) and of the Partial Final Decree, and Settlement Agreement incorporated therein, entered by the District Court in State ex rel. State Engineer et al. v. L.T. Lewis, et al., Fifth Judicial District, Nos. 20294 and 22600 Consolidated on December 10, 2005.]*

The following is from the Strategic Plan prepared by the Office of the State Engineer and the Interstate Stream Commission, dated September 2004, p. 12.

*[Specific goal to be filed in prior to contract completion.]*

Additional Performance Measures are: (i) prompt response to assigned tasks and requests for information and status reports, (ii) completion of assigned tasks and submission of deliverables and status reports within scheduled time frames (iii) assigned tasks, deliverables, and status reports completed in a manner and format reflecting a high quality of work and acceptable to the Contract Manager in all respects, and (iv) assigned tasks, deliverables, and status reports prepared and completed in an efficient and cost effective manner.

Contractor shall substantially perform the Performance Measures set forth above. In the event the Contractor fails to meet the Performance Measures, the Agency may provide written notice to the Contractor of the default and specify a reasonable period of time in which the Contractor shall advise the Agency of specific steps that it will take to achieve these results in the future and the timetable for implementation. Nothing in this subparagraph shall be construed to prevent the Agency from exercising its right pursuant to Paragraph 4 below.

2. Compensation.

The Agency shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work rendered at the rates identified in the cost schedules in the latest published "Owner Manual for Qualification-Based Selection (QBS)," published by the Professional Technical Advisory Board and sponsored by the

American Consulting Engineers Council of New Mexico, unless other rates are required for exceptional engineering services not covered in those cost schedules. Regardless of costs identified in a Scope of Work, the Agency shall not pay an amount greater than the total calculated as the product of the billing rates listed in Exhibit A attached times the hours worked. The New Mexico gross receipts tax levied on the amounts payable under this Agreement shall be paid by the Agency to Contractor. The Agency shall pay the Contractor upon receipt of a detailed statement of accounting for services performed and expenses incurred hereunder.

The Contract Manager must approve all expenses in writing and in advance or Contractor shall not be reimbursed for such expenses. For approved travel the Agency shall pay travel expenses at the rates established in the New Mexico Per Diem and Mileage Act, NMSA 1978, Sections 10-8-1, *et seq.* as implemented by the current DFA rule and the current Agency travel policy. Travel time must be billed at no more than one-half the hourly rate. All expenses must be documented to the Agency's satisfaction and invoiced for reimbursement.

Within fifteen days after the date the Agency receives written notice from the Contractor that payment is requested for services performed, the Agency shall issue a written certification of complete or partial acceptance or rejection of the services. If the Agency finds that the services are not acceptable, it shall, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, provide to the Contractor a letter of exception explaining the defect or objection to the services along with details of how the Contractor may proceed 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 certification. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. 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.

3. Term.

This Agreement shall not become effective until approved by the Department of Finance and Administration. This Agreement shall terminate on \_\_\_\_\_, 200\_\_\_, unless earlier terminated pursuant to the terms of this Agreement. No contract term, 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 ten (10) days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. 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 Agency's other legal rights and remedies caused by the Contractor's default or 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: (i) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Agency; (ii) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement; and (iii) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency including data, information, models, and any intellectual property acquired or funded through this contract, and any non-expendable personal property or equipment purchased by the Contractor with contract funds shall become property of the Agency upon termination. On the date the notice of termination is received, the Contractor shall furnish to the Agency a complete, detailed inventory of non-expendable personal property purchased with funds provided under the existing and previous Agency agreements with the Contractor; the property listed in the inventory report including client records and a final closing of the financial records and books of accounts which were required to be kept by the Contractor under the paragraph of this Agreement regarding financial records.

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 agree to the reduced funding, within thirty 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 personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.

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.  
The Contractor's acceptance of final payment of the amount 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. 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.
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 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.  
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 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.

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 agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, 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 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.

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 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. 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:

To the Contractor:

22. Key Personnel.

The following individual(s) ("Key Personnel") shall be considered material to the work performed under this Agreement and shall not be changed by Contractor without the Agency's prior written consent: \_\_\_\_\_.

If designated Key Personnel cease working for Contractor, or if Key Personnel are not materially involved (to the satisfaction of the Agency) in the work to be performed under this Agreement, the Agency may, in its sole and absolute discretion: (i) enter into a new agreement with such Key Personnel; (ii) continue this Agreement with Contractor with newly designated Key Personnel (of equal ability, experience, and qualifications) acceptable to the Agency; (iii) enter into a new agreement with a different contractor; and/or (iv) terminate this Agreement. As used in the foregoing, "working for" shall include both individuals employed by Contractor and individuals who are partners, principals, members, or owners of Contractor. Further, Contractor shall not enforce any "non-compete" agreements between Contractor and Key Personnel if the Agency seeks to enter into a new agreement with such Key Personnel.

*[Signatures and approvals on following page.]*

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

"Contractor"

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

"Agency"

Office of the State Engineer

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to budget sufficiency:

By: \_\_\_\_\_  
Director, Program Support

Date: \_\_\_\_\_

Approved as to legal sufficiency:

By: \_\_\_\_\_  
Agency Attorney

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.

ID Number: \_\_\_\_\_

By: \_\_\_\_\_  
Taxation and Revenue Department

Date: \_\_\_\_\_

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

By: \_\_\_\_\_  
DFA Contracts Review Bureau

Date: \_\_\_\_\_

Exhibit A  
to  
Professional Services Contract

**BILLING RATES**

Sr. Principal Contractor/Scientist	\$ _____/hr
Principal Contractor/Scientist	\$ _____/hr
Sr. Consulting Contractor/Scientist	\$ _____/hr
Consulting Contractor/Scientist	\$ _____/hr
Professional Contractor/Scientist II	\$ _____/hr
CADD Supervisor	\$ _____/hr
Professional Contractor/Scientist I	\$ _____/hr
Sr. Project Contractor/Scientist	\$ _____/hr
Project Contractor/Scientist	\$ _____/hr
Sr. Staff Contractor/Scientist	\$ _____/hr
Sr. Designer	\$ _____/hr
Designer	\$ _____/hr
Staff Contractor/Scientist	\$ _____/hr
Sr. Drafter/Inspector	\$ _____/hr
Sr. Technician	\$ _____/hr
Drafter	\$ _____/hr
Sr. Project Assistant	\$ _____/hr
Project Assistant	\$ _____/hr
Editor/Illustrator	\$ _____/hr
Testor	\$ _____/hr
Word Processing	\$ _____/hr
Clerical	\$ _____/hr
Administrative	\$ _____/hr
Per diem	\$ _____/day
Truck mileage	\$ _____/mile
GPS	\$ _____/day

**BILLING RATES**  
**(Continued)**

Subcontractor 1 ( _____ ): list title	\$ _____/hr
Subcontractor 2 ( _____ ): list title	\$ _____/hr
Subcontractor 3 ( _____ ): list title	\$ _____/hr
Subcontractor 4 ( _____ ): list title	\$ _____/hr
Subcontractor 5 ( _____ ): list title	\$ _____/hr
Subcontractor 6 ( _____ ): list title	\$ _____/hr
Subcontractor 7 ( _____ ): list title	\$ _____/hr
Subcontractor 8 ( _____ ): list title	\$ _____/hr

**APPENDIX B**  
**Professional Engineering Services**  
**RFP No. 2005-9-ISC**

**ACKNOWLEDGEMENT OF RECEIPT OF REQUEST FOR PROPOSALS 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 ending with Appendix B.

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than close of business on \_\_\_\_\_, 2005. Only Offerors that return this form in a timely manner will receive copies of addenda to this RFP.

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

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

By: \_\_\_\_\_ Date: \_\_\_\_\_  
(signature)  
Name: \_\_\_\_\_  
(printed)  
Title: \_\_\_\_\_

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

Lee Pease, Procurement Manager  
New Mexico Interstate Stream Commission  
(Street Address for Packages only: Bataan Memorial Building, Room 101)  
P.O. Box 25102  
Santa Fe, NM 87504-5102  
Phone: (505) 827-5803  
Fax: (505) 827-6188