

REQUEST FOR PROPOSALS
FOR
AUDITING SERVICES

LEGISLATIVE COUNCIL SERVICE
490 OLD SANTA FE TRAIL, SUITE 411
SANTA FE, NM 87501
(505) 986-4600

ISSUE DATE: APRIL 26, 2024

NOTICE

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 bribes, gratuities and kickbacks.

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1. INTRODUCTION

The Legislative Council Service (LCS) invites individuals (Offerors) to submit proposals in accordance with the outlines and specifications contained in this request for proposals (RFP). This RFP contains specific requests for information. In responding to this RFP, Offerors are encouraged to provide any additional information they believe is relevant.

2. SEQUENCE OF EVENTS

<u>Event</u>	<u>Date</u>
A. Release of RFP	April 26, 2024
B. Submission of Proposals	by 4:00 p.m. Mountain Daylight Time (MDT) on May 20, 2024
C. Evaluation of Proposals and Selection	May 20-24, 2024

The selection date is subject to extension at the discretion of the LCS. The effective date of the Contract is tentative; it is dependent on the selection date, the length of time required for Contract negotiation and the length of time for processing the Contract.

The events identified in the schedule above are briefly described below.

A. Release of RFP. This RFP will be advertised in two (2) newspapers of general circulation pursuant to Sections 13-1-104 and 13-1-113 NMSA 1978, and prospective Offerors may direct questions about the RFP to Anesa Serna-Espinoza at the office of the LCS, 490 Old Santa Fe Trail, Suite 411, Santa Fe, New Mexico 87501; telephone: (505) 986-4600.

B. Submission of Proposals. Two (2) copies and one (1) electronic copy of the proposal and supporting documentation must be submitted to the LCS. Proposals must be in the format specified in Paragraph 5 of this RFP and must be signed by the Offeror.

The deadline for receipt of proposals by the LCS is May 20, 2024 no later than 4:00 p.m. MDT. Proposals will be time-stamped upon receipt.

All proposals must be submitted in sealed envelopes marked "Proposal for Auditing Services". All proposals must be addressed to:

Legislative Council Service
490 Old Santa Fe Trail, Suite 411
Santa Fe, NM 87501

SEALED PROPOSAL

A proposal may be modified by an Offeror prior to the deadline for submission of proposals by delivery of a written modification to the above address. The sealed envelope must be marked "Modification to Proposal for Auditing Services".

A proposal may be withdrawn prior to the deadline for submission of proposals by delivering written notice or by telephone notification to the person listed above.

Any proposal or modification received after the deadline for submission of proposals shall be considered late. Unless a late proposal is the only one received, no late proposal or late modification shall be considered unless it would have been timely but for the action or inaction of the LCS. Time limits shall not otherwise be waived.

Proposals will not be opened publicly and will not be open to public inspection until after award of the Contract.

C. Evaluation of Proposals and Selection of Offeror. Proposals will be evaluated by the LCS using the criteria listed in Paragraph 7 of this RFP. During the evaluation process, the LCS may seek clarification from Offerors but shall NOT negotiate with Offerors.

The individual selected to perform the work and those individuals not selected will be notified in writing by the LCS. Selection does NOT constitute an obligation to contract with the successful Offeror.

3. AMENDMENTS TO RFP

If there are any amendments to this RFP, they shall be in writing and shall be sent to all individuals who have notified the LCS that they have received the RFP. Amendments shall be distributed with sufficient time to allow Offerors to consider the amendments in preparing their proposals. If necessary, the deadline for submission of proposals will be extended by the amendment.

4. CANCELLATION OF RFP; REJECTION OF PROPOSALS

The LCS reserves the right to cancel this RFP at any time and for any reason.

Any and all proposals may be rejected in whole or in part when it is in the interest of the LCS to do so. The LCS is not responsible for the payment of any costs incurred by the Offeror in the preparation or submission of a proposal.

The issuance of this RFP, the receipt of proposals or the selection of a proposal in no manner obligates the LCS to the eventual purchase of services. This process is solely at the discretion of

the LCS and may be terminated without penalty or obligation at any time prior to the signing of a written Contract.

5. PROPOSAL FORMAT

Offerors shall include the following information in their proposals:

A. Letter of Transmittal. Include the following information:

- (1) the name, address and telephone number of the Offeror;
- (2) the signature of the Offeror;
- (3) the date of the proposal;
- (4) a statement that the Offeror, if awarded the Contract, will comply with the Contract terms and conditions set forth in this RFP; and
- (5) a statement that the Offeror's proposal is valid for thirty (30) days after the deadline for submission of proposals.

B. Description of Services. Describe how the services shall be provided or what tasks shall be performed to accomplish the scope of work contained in Paragraph 6 of this RFP. (The scope of work indicates "what" the Offeror is supposed to do; the description of services should show "how" the Offeror intends to perform the services.)

C. Remuneration. The Offeror shall state the maximum number of hours available for providing services to the LCS pursuant to the Contract. The Offeror shall state the hourly rate for which the services shall be provided. The Contractor will be compensated pursuant to Section 2.2.2.8(M)(3) NMAC. The rate shall be that agreed upon by the LCS and the Contractor but not in excess of prevailing rates in the state for comparable services. The Contractor shall be reimbursed for incurred and separately stated applicable gross receipts taxes.

D. Related Experience and Qualifications. The Offeror shall include in the proposal educational degrees, prior experience and qualifications related to accomplishing the scope of work contained in Paragraph 6 of this RFP. This portion of the proposal shall demonstrate the extent to which the Offeror is qualified to perform both the scope of work outlined in this RFP and the specific services contained in the description of services portion of the Offeror's proposal.

The Offeror's ability to meet the evaluation factors contained in Paragraph 7 of this RFP must be stated in this section of the proposal.

6. SCOPE OF WORK

The Contractor shall furnish auditing services to the LCS as generally requested and directed by the Director of the LCS, which services shall *not* include the annual audit of the LCS, Legislative Building Services Department, House interim and Senate interim accounts. Among the services to be provided by the Contractor shall be the following.

The Contractor shall conduct a financial and compliance audit of the general purpose financial statements and the combining, individual fund and account group financial statements of selected funds and subaccounts for the fiscal year ending June 30, 2024. Such audit shall be conducted in accordance with Section 2.2.2 NMAC Audit Rule.

The audit will consist of auditing the Capitol Kitchen Fund (fund 81100), the Legislature Fund (fund 13300), the House Session Fund (fund 20040) and the Senate Session Fund (fund 20030). The following is a summary of the funds to be audited. Offerors shall also include an estimate of costs for an audit of these funds for fiscal years 2025 and 2026. Please note that appropriations and receipts during a fiscal year in which the New Mexico Legislature (Legislature) meets for sixty (60) days (odd-numbered years) may be double the amounts for years that the Legislature meets for only thirty (30) days. Therefore, audit costs for even-numbered years should reflect this reduced activity.

FUND	APPROPRIATIONS OR RECEIPTS (FY 2024)
Capitol Kitchen Fund (fund 81100) (regular and special sessions)	\$4,700
Legislature Fund (fund 13300) (regular and special sessions)	\$1,457,200
House Session Fund (fund 20040) (regular and special sessions)	\$2,740,900
Senate Session Fund (fund 20030) (regular and special sessions)	\$2,823,800

7. EVALUATION

The responsible Offeror whose proposal is most advantageous to the LCS will be selected to perform the services. The inclusion of cost as a factor does not require the LCS to select the lowest-cost proposal. The following evaluation factors will be considered in order of importance:

- (1) capability of firm (30%);
- (2) work requirements and audit approach (15%);
- (3) technical experience (40%);
- (4) firm strengths or weaknesses (5%); and
- (5) cost (10%).

8. CONTRACT TERMS AND CONDITIONS

The Contract between the LCS and the successful Offeror will contain substantially the following terms and conditions in the form produced and approved by the State Auditor. In the letter of transmittal, the Offeror shall include a statement agreeing to these terms and conditions.

A. Scope of Work. The Contractor shall conduct a financial and compliance audit of the Capitol Kitchen Fund, the Legislature Fund, the House Session Fund and the Senate Session Fund accounts for Fiscal Year 2024 in accordance with auditing standards generally accepted in the United States of America, the United States Government Accountability Office's *Generally Accepted Government Auditing Standards (GAGAS)* issued by the Comptroller General of the United States; the United States Office of Management and Budget's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*; the Audit Act, Sections 12-6-1 through 12-6-15 NMSA 1978; and the Audit Rule (Section 2.2.2.1 NMAC et seq.).

B. Delivery and Reproduction.

(1) In order to meet the delivery terms of the Contract, the Contractor shall deliver the documents to the State Auditor on or before the deadline set forth for the LCS by Section 2.2.2.9 NMAC.

(2) Reports uploaded to the OSA-Connect online portal by the LCS's due date will be considered received by the due date for purposes of Section 2.2.2.9 NMAC. Unfinished or excessively deficient reports will not satisfy this requirement; such reports will be rejected and returned to the Contractor, and the State Auditor may take action in accordance with Section 2.2.2.13 NMAC. If the State Auditor does not receive copies of the management representation letter and the completed Report Review Guide with the audit report or prior to submittal of the audit report, the State Auditor will not consider the report submitted to the State Auditor.

(3) As soon as the Contractor becomes aware that circumstances exist that will make the LCS's audit report late, the Contractor shall immediately provide written notification of the situation to the State Auditor in accordance with Section 2.2.2.9 NMAC.

(4) Pursuant to Section 2.2.2.10 NMAC, the Contractor shall prepare a written and dated engagement letter that identifies the specific responsibilities of the Contractor and the LCS.

(5) After its review of the audit report pursuant to Section 2.2.2.13 NMAC, the State Auditor shall authorize the Contractor to print and submit the final audit report. Within five (5) business days after the date of the authorization to print and submit the final audit report, the Contractor shall provide the State Auditor an electronic version of the audit report in PDF format, the electronic copy of the Excel version of the Summary of Findings Form and any other required electronic schedule (if applicable). After the State Auditor officially releases the audit report by issuance of a release letter, the Contractor shall deliver copies of the audit report to the LCS.

(6) The LCS or the Contractor shall ensure that every member of the LCS's governing authority shall receive a copy of the report.

C. Compensation. The total compensation will not exceed the limit specified in the Contract. The total amount shall include applicable New Mexico gross receipts taxes for which the Contractor is responsible. The Contractor agrees not to, and shall not, perform any services in furtherance of the Contract prior to approval by the State Auditor. The Contractor acknowledges and agrees that it will not be entitled to payment or compensation for any services performed by the Contractor pursuant to the Contract prior to approval by the State Auditor.

The State Auditor may authorize progress payments to the Contractor by the LCS pursuant to Section 2.2.2.8(M)(3) NMAC; provided that the authorization is based upon evidence of the percentage of audit work completed as of the date of the request for partial payment. If requested by the State Auditor, the LCS shall provide a copy of the progress billings. Final payment for services rendered by the Contractor shall not be made until a determination and written finding is made by the State Auditor in the release letter that the audit has been made in a competent manner in accordance with the provisions of the Contract and applicable rules of the State Auditor.

D. Term. The Contract will be effective on a date to be determined by the Director of the LCS. The Contract may be a multi-term contract and may contain provisions allowing for renewals cumulating not more than three (3) years from the effective date of the initial Contract.

E. Termination, Breach and Remedies. The Contract may be terminated by either of the parties upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. A party may not nullify obligations or liabilities already incurred for performance or for failure to perform prior to the date of termination.

(1) The Contract may be terminated by:

(a) either party without cause, upon written notice delivered to the other party and the State Auditor at least ten (10) days prior to the intended date of termination;

(b) either party, immediately upon written notice delivered to the other party and the State Auditor, if a material breach of any of the terms of the Contract occurs. Unjustified failure to deliver the report in accordance with the Contract Terms and Conditions shall constitute a material breach of the Contract;

(c) the LCS, pursuant to Subparagraph V of this RFP, immediately upon written notice to the Contractor and the State Auditor; and

(d) the State Auditor, immediately upon written notice to the Contractor and the LCS, after determining that the audit has been unduly delayed or for any other reason.

(2) By termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. If the LCS or the State Auditor terminates the Contract, the Contractor shall be entitled to compensation for work performed prior to termination in the amount of earned, but not yet paid, progress payments, if any, that the State Auditor has authorized to the extent required by Subparagraph C of this paragraph. If the Contractor terminates the Contract for any reason other than LCS's breach of the Contract, the Contractor shall repay to the LCS the full amount of any progress payments for work performed under the terms of the Contract.

(3) Pursuant to Section 2.2.2.8 NMAC, the State Auditor may disqualify the Contractor from eligibility to contract for audit services with the State of New Mexico if the Contractor knowingly makes false statements, false assurances or false disclosures under the Contract. The State Auditor on behalf of the LCS or the LCS may bring a civil action for damages or any other relief against the Contractor for a material breach of the Contract.

(4) The remedies herein are not exclusive and nothing in this section waives other legal rights and remedies of the parties.

F. Status of Contractor. The Contractor is an independent contractor performing professional services for the LCS and is not an employee of the State of New Mexico. The Contractor shall not accrue leave, retirement, insurance, bonding, use of state vehicles or any other benefits afforded to employees of the State of New Mexico by virtue of the Contract. The Contractor agrees not to purport to bind the State of New Mexico to any obligation not assumed under the Contract unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

G. Assignment. The Contractor may not assign or transfer any interest in the Contract or assign any claims for money due or to become due under the Contract without the prior written approval of the LCS.

H. Subcontracting. The Contractor shall not subcontract any portion of the services to be performed under the Contract without the prior written approval of the LCS and the State Auditor.

An agreement between the Contractor and a subcontractor to subcontract any portion of the services under the Contract shall be completed on a form prescribed by the State Auditor. The agreement shall be an amendment to the Contract and shall specify the portion of the audit services to be performed by the subcontractor, how the responsibility for the audit will be shared between the Contractor and the subcontractor, the party responsible for signing the audit report and the method by which the subcontractor will be paid.

Pursuant to Section 2.2.2.8 NMAC, the Contractor may subcontract only with independent public accounting firms that are on the State Auditor's *List of Approved Audit Firms* and that are not otherwise restricted by the State Auditor from entering into such a contract.

I. Independence. The Contractor represents and warrants its personal, external and organizational independence from the LCS in accordance with the *GAGAS* issued by the Comptroller General of the United States and Section 2.2.2.8 NMAC. The Contractor shall immediately notify the State Auditor and the LCS in writing if any impairment to the Contractor's independence occurs or may occur during the period of the Contract.

J. Records and Audit. The Contractor shall maintain detailed time records that indicate the date, time and nature of services rendered during the term of the Contract. The Contractor shall retain the records for a period of at least five (5) years after the date of final payment under the Contract. These records are subject to inspection by the LCS and the State Auditor. The LCS has the right to audit billings both before and after payment. Payment under the Contract does not foreclose the right of the LCS to recover excessive or illegal payments.

K. Agency Books and Records. The LCS is responsible for maintaining control of all books and records at all times and the Contractor shall not remove any books and records from the LCS's possession for any reason.

L. Working Papers.

(1) The Contractor shall retain its working papers of the LCS's audit conducted pursuant to the Contract for a period of at least five (5) years after the date shown on the opinion letter of the audit report, or longer if requested by the federal cognizant agency for audit, oversight agency for audit, pass through-entity or the State Auditor. The State Auditor shall have access to the working papers at the State Auditor's discretion. When requested by the State Auditor, the Contractor shall deliver the original or clear, legible copies of all working papers to the requesting entity.

(2) The Contractor should follow the guidance of AU-C Sections 210.A27 through 210.A31 and AU-C Sections 510.A3 through 510.A11 in communications with the predecessor auditor and to obtain information from the predecessor auditor's audit documentation.

M. Designated On-Site Staff. The Contractor's on-site individual auditor responsible for supervision of work and completion of the audit is TBD. The Contractor shall notify the LCS and the State Auditor in writing of any changes in staff assigned to perform the audit.

N. Invalid Term or Condition. If any term or condition of the Contract shall be held invalid or unenforceable, the remainder of the Contract shall not be affected.

O. Release. The Contractor shall, upon final payment of the amount due under the Contract, release the State Auditor, the LCS and its officers and employees and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under the Contract. The Contractor shall not purport to bind the State of New Mexico to any obligation not assumed in the Contract by the State of New Mexico, unless the Contractor has express written authority from the LCS to do so, and then only within the strict limits of that authority. This paragraph does not release the Contractor from any liabilities, claims or obligations whatsoever arising from or under the Contract.

P. Confidentiality. All information provided to or developed from any source whatsoever by the Contractor in the performance of the Contract 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 LCS and the State Auditor, except in accordance with the Contract or applicable standards.

Q. Product of Service; Copyright. All work and rights to work produced, developed or acquired by the Contractor under the Contract, including ownership of any copyrights to work produced under the Contract, shall be transferred to and become the exclusive property of the State of New Mexico, and all materials developed or acquired under the Contract shall be delivered to the LCS not later than the termination date of the Contract. The Contractor and the LCS acknowledge that the compensation paid to the Contractor is due consideration for transfer of ownership of any copyrights for work produced under the Contract. The LCS and the State Auditor may post an audited financial statement on their respective websites once it is publicly released by the State Auditor.

R. Conflict of Interest. The Contractor represents and warrants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required under the Contract. The Contractor and the LCS shall each certify that it has followed the requirements of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978, regarding contracting with a public officer, state employee or former state employee, as required by the applicable professional standards.

S. Amendment. The Contract shall not be altered, changed or amended except by prior written agreement of the parties and with the prior written approval of the State Auditor. Any amendments to the Contract shall comply with the Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978.

T. Merger. The Contract supersedes all agreements, covenants and understandings between the parties hereto concerning the subject matter hereof. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in the Contract.

The Contractor and LCS shall enter into and execute an engagement letter pursuant to Section 2.2.2.10 NMAC, consistent with *Generally Accepted Auditing Standards* and *GAGAS*. The engagement letter and any associated documentation included with or referenced in the engagement letter shall not be interpreted to amend the Contract. Conflicts between the engagement letter and the Contract are governed by the Contract and shall be resolved accordingly.

U. Applicable Law. The Contract will be governed by the laws of the State of New Mexico. By execution of the Contract, the Contractor irrevocably consents to the exclusive personal jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising from or related to the Contract.

V. Appropriation. The terms of the Contract are contingent upon sufficient appropriations and authorization being made to the LCS by the New Mexico Legislature or other funding agency. If sufficient appropriations and authorization are not made by the New Mexico Legislature or other funding agency, the Contract terminates immediately upon the Contractor's receipt of written notice of termination from the LCS. The LCS's decision of whether sufficient appropriations and authorization are made by the New Mexico Legislature shall be accepted by the Contractor and is final. This section of the Contract does not supersede the LCS's requirement to have an annual audit pursuant to Subsection A of Section 12-6-3 NMSA 1978.

W. Insurance. The Contractor shall maintain professional liability insurance covering any error or omission committed during the term of the Contract. The Contractor shall provide proof of such insurance to the State Auditor with the firm profile. The amount maintained should be commensurate with risk assumed. The Contractor shall provide to the State Auditor, prior to expiration, updated insurance information.

X. Notice. 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 bribes, gratuities and kickbacks.

Y. Equal Opportunity Compliance. The Contractor shall comply with all federal and state laws, rules and regulations and executive orders of the governor of the State of New Mexico pertaining to equal employment opportunity. In accordance with all such laws, rules, regulations and orders, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, sexual orientation, age, physical or mental disability, serious medical condition, spousal affiliation 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 the Contract. If the Contractor is found to be not in compliance with these requirements during the life of the Contract, the Contractor shall take appropriate steps to correct these deficiencies.