

**REQUEST FOR PROPOSALS (RFP)
FOR
LEGAL SERVICES
RELATED TO THE INTERIM LEGISLATIVE ETHICS COMMITTEE**

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

ISSUE DATE:
APRIL 26, 2023

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) is soliciting sealed proposals for legal services pertaining to the Interim Legislative Ethics Committee (ILEC). The staff for the ILEC is provided by the LCS. The intent of this RFP is to select multiple qualified legal professionals and firms to perform legal services on an as-needed basis pursuant to the Anti-Harassment Policy or as required for the ILEC or its subcommittees. Award of any Contract as a result of this RFP does not guarantee any work being assigned under that Contract and any work assignments will depend upon the needs of the ILEC.

2. BACKGROUND INFORMATION

Pursuant to Section 2-15-8 NMSA 1978, the ILEC is authorized to:

- (1) issue advisory opinions on the interpretation and enforcement of ethical principles as applied to the legislature and that are not under the jurisdiction of the State Ethics Commission;
- (2) investigate complaints from another member of the legislature or a member of the public alleging misconduct of a legislator;
- (3) investigate referrals made to the co-chairs of the New Mexico Legislative Council (hereinafter "Legislative Council") from the State Ethics Commission, the attorney general, the secretary of state or a district attorney;
- (4) hire special counsel, arbitrators or independent hearing officers as necessary; and
- (5) make recommendations to the respective houses regarding proposed sanctions for ethical misconduct.

At the outset of the filing of a written harassment complaint against a legislator pursuant to the Anti-Harassment Policy, Legislative Council Policy No. 15, in conjunction with the legislature's Anti-Harassment Policy, requires that the co-chair of the Legislative Council from the same chamber as the charged member, the respective majority and minority floor leaders and outside counsel make a determination as to whether the complaint should be investigated further. If it is determined that the matter should be investigated further, during the interim, the complaint must be forwarded to an investigative subcommittee of the ILEC.

Legislative Council Policy No. 15 provides that when the ILEC deals with charges brought against a legislator or receives a referral relating to the conduct of a legislator, the committee shall function through investigative and hearing subcommittees. Investigative subcommittee members are selected from the membership of the ILEC by the respective Legislative Council co-chair who serves in the same chamber as the charged legislator. Those selected members are to be composed of an equal number from each party. Legislative Council Policy No. 15 provides for the appointment of additional members pursuant to a Legislative-Council-approved Anti-Harassment Policy. On December 12, 2022, the Legislative Council amended the legislative Anti-Harassment Policy to require an investigative subcommittee in an anti-harassment matter to

retain "a licensed attorney, who has experience in harassment claims and is without any current or previous involvement in the matter, to serve as an additional voting member of the investigative committee". The Anti-Harassment Policy provides that the additional voting member shall serve as the chair of the investigative subcommittee.

The Anti-Harassment Policy also requires the investigative subcommittee to retain an attorney in addition to that attorney who serves as the chair of the investigative subcommittee. Specifically, the policy requires the investigative subcommittee to "retain special counsel, who has experience in the investigation of harassment claims and shall not be the same person as outside counsel, to investigate the complaint and submit to the subcommittee a report containing the special counsel's findings, conclusions and recommendations regarding further action". The special counsel's investigation is subject to certain deadlines specified in the Anti-Harassment Policy.

Legislative Council Policy No. 15 also provides for hearing subcommittees, which are composed of the members of the ILEC from the house of the charged member and who were not members of the investigative subcommittee. Additional members may be appointed pursuant to a Legislative-Council-approved Anti-Harassment Policy. The Legislative Council amended the legislative Anti-Harassment Policy on December 12, 2022 to require a hearing subcommittee to "retain an attorney, retired judge or justice, who is without any current or previous involvement with the matter, to serve as an additional voting member of the hearing subcommittee". The Anti-Harassment Policy provides that such additional voting member shall serve as the chair of the hearing subcommittee.

Section 2-15-8 NMSA 1978, Legislative Council Policy No. 15 and the legislative Anti-Harassment Policy are attached hereto as Appendices A, B and C, respectively.

3. SEQUENCE OF EVENTS

<u>Event</u>	<u>Date</u>
A. Release of RFP	April 26, 2023
B. Submission of Proposals	May 19, 2023
C. Evaluation of Proposals and Selection	May 22-26, 2023

The selection date is subject to extension at the discretion of the LCS. The contracts entered into pursuant to this RFP are contemplated to become effective June 5, 2023; however, the effective dates are 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 in the State Bar of New Mexico *Bar Bulletin*. Prospective Offerors may direct questions about the RFP to Amy Chavez-Romero, Procurement Manager, at the LCS, 490 Old Santa Fe Trail, Suite 411, Santa Fe, New Mexico 87501; telephone (505) 986-4600.

B. Submission of Proposals. An original and three (3) copies of the proposal and supporting documentation shall be submitted to the LCS. Proposals shall be in the format specified in Item 6 of this RFP and shall be signed by the Offeror.

The deadline for receipt of proposals by the LCS is May 19, 2023, no later than 5:00 p.m. Proposals will be time-stamped upon receipt.

All proposals shall be submitted in sealed envelopes marked "Proposal for Legal Services for the Legislative Council Service".

All proposals shall be addressed to:

Amy Chavez-Romero, Procurement Manager
Legislative Council Service
490 Old Santa Fe Trail, Suite 411
Santa Fe, New Mexico 87501

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 shall be marked "Modification to Proposal for Legal Services for the Legislative Council Service".

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

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

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

C. Evaluation of Proposals. Proposals will be evaluated by the LCS using the criteria listed in Item 8 of this RFP. During the evaluation process, the LCS may seek clarification from Offerors but shall not negotiate with Offerors.

D. Selection of Offeror. The final selection of an Offeror shall be made by the LCS. That selection will be publicly announced on or after May 26, 2023. Offerors selected to perform the work and those Offerors not selected will be notified in writing by the LCS. Selection does not constitute an obligation to contract with an Offeror.

4. AMENDMENTS TO RFP

If there are any amendments to this RFP, they shall be in writing and shall be mailed to all persons who requested the RFP by mail or have notified the LCS of their intent to respond to 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.

The written acknowledgment form mailed with the amendment shall be completed by the Offeror and submitted with the proposal as evidence of receipt of the amendment.

5. 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 shall not be responsible for the payment of any costs incurred by an Offeror in the preparation or submission of a proposal.

The issuance of this RFP, the receipt of proposals or the selection of an Offeror 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.

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

B. Description of Relevant Professional Legal Experience. Offerors shall provide a discussion of the relevant professional experience and qualifications of the principal personnel who will be assigned to perform the legal services as follows, including:

- (1) evidence of familiarity with the New Mexico Legislature;

(2) evidence of experience in discrimination law and investigation of or other experience with claims of harassment;

(3) discussion of experience, if any, as a judge or justice; and

(4) evidence of familiarity with statutory, regulatory and constitutional provisions pertaining to public officials and legislators with regard to ethics issues.

C. Experience and Qualifications. Offerors shall identify the individuals who will be assigned to perform the work pursuant to the Contract and include for each individual the relevant education, training, prior experience and involvement in representation of a similar nature on which the individual has worked. The resumes and credentials of all individuals who will be assigned to perform the work pursuant to the Contract shall be included. This portion of the proposal should demonstrate the extent to which the Offeror is qualified to perform the scope of work outlined in this RFP.

D. Ability and Capacity to Perform Services. Offerors shall describe their ability to become available on an as-needed basis for the services described in the Scope of Work and to respond to requests in a timely manner.

E. Client References. Offerors shall provide lists of:

(1) references from individuals who are familiar with the work of the Offeror and are aware of the Offeror's performance in similar representations. References from current or former legislators shall not be provided and will not be considered; and

(2) governmental entities, agencies or other political subdivisions that the Offeror has represented in the last five (5) years, including the time period of representation and nature of the work performed.

F. Cost/Remuneration. After selection by the LCS, compensation for services will be negotiated between an Offeror and the LCS. The LCS will consider alternative proposals regarding compensation. The proposals shall include the hourly rate to be charged for each category of personnel involved in providing the required services. Compensation shall be paid monthly for work performed in the preceding month. Reimbursement shall be provided for incurred and separately stated applicable gross receipts taxes and reasonable expenses incurred in providing these services.

G. Campaign Contribution Disclosure. An Offeror shall disclose any campaign contributions pursuant to Section 13-1-191.1 NMSA 1978 as identified in the Campaign Contribution Disclosure Form in Appendix D of this RFP.

H. Resident Business, Native American Resident Business, Resident Veteran Business and Native American Resident Veteran Business Preference. To receive a resident business, Native American resident business, resident veteran business or Native American resident veteran business preference, pursuant to Sections 13-1-21 and 13-1-22 NMSA 1978, Offerors must

include a copy of their preference certificate with the proposal. Certificates for preferences can be obtained through the Taxation and Revenue Department (www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx).

7. SCOPE OF WORK

The following legal assistance shall be provided as requested by the LCS Director or the LCS:

(1) provide advice and counsel to the LCS and ILEC on legal issues pertaining to an ethics matter or inquiry before the ILEC or legislative leadership pursuant to Legislative Council Policy No. 15; or

(2) provide legal services as any one of the following with regard to a harassment complaint brought against a legislator pursuant to the legislative Anti-Harassment Policy:

(a) outside counsel with regard to a written complaint filed pursuant to the legislative Anti-Harassment Policy for a determination of whether a complaint should be further investigated;

(b) a chair and voting member of an investigative subcommittee of the ILEC;

(c) special counsel for the purposes of: i) investigating complaints referred to an investigative subcommittee of the ILEC; ii) making recommendations with regard to probable cause; iii) preparation of reports or charging documents as necessary; and iv) assisting an investigative subcommittee in representations before a hearing subcommittee; and

(d) a chair and voting member of a hearing subcommittee of the ILEC.

8. EVALUATION

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

(1) relevant professional legal experience (25%);

(2) experience and qualifications of principal personnel who are to be assigned to the representation; specifically, what experience the Offeror has had in providing legal services on constitutional, statutory or regulatory issues affecting the New Mexico Legislature or its legislative entities (30%);

(3) ability and capacity to perform services and to respond to requests in a timely manner (20%);

(4) client references (15%); and

(5) cost (10%).

An additional 8% of the total weight of the factors used in evaluating the proposal will be awarded to an Offeror that provides a copy of the Offeror's resident business or Native American resident business preference certificate. An additional 10% of the total weight of the factors used in evaluating the proposal will be awarded to an Offeror that provides a copy of the Offeror's resident veteran business or Native American resident veteran business preference certificate. An Offeror will not be awarded both a resident business preference and a resident veteran business preference or a Native American resident business preference and a Native American resident veteran business preference.

9. CONTRACT TERMS AND CONDITIONS

The Contract between the LCS and a successful Offeror shall contain substantially the following terms and conditions. In the letter of transmittal, the Offeror shall include a statement agreeing to these terms and conditions and explaining any terms or conditions with which the Offeror does not agree.

A. Scope of Work. This portion of the Contract shall be drafted following selection of an Offeror to perform the services. It will incorporate the Scope of Work in Item 7 of this RFP and the description of services from the Offeror's proposal.

B. Compensation. The total compensation shall not exceed the limit specified in the Contract. The total amount shall include applicable New Mexico gross receipts taxes for services, which shall be paid by the Contractor. The hourly rate shall be specified in the Contract. If additional services are necessary, the LCS and the Contractor by mutual consent may amend the Contract to cover additional costs associated with such additional services.

C. Term. The Contract shall be effective and its terms shall extend from a date to be determined by the LCS Director through June 30, 2024. The Contract may be renewed for three (3) additional years.

D. Termination. 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 shall not nullify obligations or liabilities already incurred for performance or for failure to perform prior to the date of termination.

E. 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.

F. Assignment. The Contractor shall 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. An approved assignment or transfer shall include a provision that binds the assignee or transferee to all terms and conditions of this Contract.

G. 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.

H. Records and Audit. The Contractor shall maintain detailed time records that indicate the date, time and nature of services rendered. These records shall be provided by the Contractor for inspection by the LCS and the State Auditor upon written request of the LCS. The LCS shall have the right to audit billings both before and after payment. Payment under the Contract is not a waiver of the right of the LCS to recover excessive or illegal payments.

I. Release. The Contractor shall, upon final payment of the amount due under the Contract, release the LCS, 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 agrees not to 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.

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

K. Product of Service; Copyright. All materials developed or acquired by the Contractor under the Contract shall become the property of the State of New Mexico and shall be delivered to the LCS not later than the termination date of the Contract. Nothing produced, in whole or in part, by the Contractor under the Contract shall be the subject of an application for copyright by or on behalf of the Contractor.

L. Conflict of Interest. The Contractor shall warrant that the Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict with the performance of services required under the Contract.

M. Amendment. The Contract shall not be altered, changed or amended except by an instrument in writing executed by the parties.

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

O. Applicable Law. The Contract shall be governed by the laws of New Mexico.

P. Waiver. The Contract shall contain a provision that states that no waiver of any breach of the Contract or any of its terms or conditions shall be a waiver of any other or subsequent breach; a waiver shall not be valid unless it is in writing and signed by the party granting the waiver.

Q. Appropriation. The terms of the Contract are contingent upon sufficient appropriations and authorization for expenditure being made to the LCS by the New Mexico Legislature. If

sufficient appropriations and authorizations are not made by the New Mexico Legislature, the Contract shall, notwithstanding the provisions of any other section of the Contract, terminate immediately upon the Contractor's receipt of written notice of termination from the LCS. The LCS's decision as to whether sufficient appropriations and authorizations are made by the New Mexico Legislature shall be accepted by the Contractor and shall be final.

R. 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.

S. Equal Opportunity Compliance. The Contractor shall agree to comply with all federal and state laws pertaining to equal employment opportunity. In accordance with all such laws, the Contractor shall agree to assure that no person in the United States shall, on the grounds of race, color, national origin, sex, sexual preference, age or disability, 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 agree to take appropriate steps to correct these deficiencies.

APPENDIX A

2-15-8. Interim legislative ethics committee; duties.

A. The interim legislative ethics committee is authorized to:

- (1) issue advisory opinions on the interpretation and enforcement of ethical principles as applied to the legislature and that are not under the jurisdiction of the state ethics commission;
- (2) investigate complaints from another member of the legislature or a member of the public alleging misconduct of a legislator;
- (3) investigate referrals made to the co-chairs of the New Mexico legislative council from the state ethics commission, the attorney general, the secretary of state or a district attorney;
- (4) hire special counsel, arbitrators or independent hearing officers as necessary; and
- (5) make recommendations to the respective houses regarding proposed sanctions for ethical misconduct.

B. The interim legislative ethics committee shall issue an annual report no later than the first day of May of each year regarding its activities during the previous twelve months, including a listing of the number of complaints received, the disposition of the complaints that have been resolved and the advisory opinions issued.

C. The interim legislative ethics committee shall maintain a web page on the legislature's website.

History: [Laws 1993, ch. 46, § 53](#); [2019, ch. 86, § 22](#).

ANNOTATIONS

The 2019 amendment, effective January 1, 2020, specified that the interim legislative ethics committee is authorized to issue advisory opinions on the interpretation and enforcement of ethical principles as applied to the legislature that are not under the jurisdiction of the state ethics commission, and required the interim legislative ethics committee to issue an annual report and to maintain a web page on the legislature's website; added new subsection designation "A" and redesignated former Subsections A through E as Paragraphs A(1) through A(5), respectively; in Paragraph A(1) added "and that are not under the jurisdiction of the state ethics commission", in Paragraph A(3), after "legislative council from the", added "state ethics commission, the", in Paragraph A(4), after "special counsel", added "arbitrators", in Paragraph A(5), after "respective houses", deleted "by the end of the first full week of the next convened regular session"; and added new Subsections B and C.

APPENDIX B

LEGISLATIVE COUNCIL POLICY NUMBER 15 FROM THE LAWS AND POLICIES OF THE LEGISLATIVE COUNCIL

15. INTERIM LEGISLATIVE ETHICS COMMITTEE.--

A. The interim legislative ethics committee is the body to which shall be referred matters relating to the ethical conduct of legislative members which arise during the interim, including conduct which may give rise to constitutional discipline under Article 4, Section 11 of the constitution of New Mexico.

B. The interim legislative ethics committee shall be appointed by the legislative council in accordance with the recommendations of the respective floor leaders of each house. The two major political parties in each house shall have equal representation on the committee. Members of the legislative council may serve on the interim legislative ethics committee. There shall be co-chairs of the committee, one from each house of the legislature. To the extent feasible, the committee shall be comprised of members of the standing committees of the house and senate responsible for ethics matters during legislative sessions.

C. The interim legislative ethics committee is authorized, during the interim, to issue advisory opinions and letters on matters relating to the ethical conduct of legislators in accordance with the provisions of these policies. The committee is also authorized, during the interim, to conduct investigations and hearings concerning the ethical conduct of legislators in accordance with the provisions of these policies. Except in an extreme emergency, the committee shall meet no more than once a month during the interim.

D. Advisory opinions shall be issued by the full committee and shall be dealt with in the following manner.

(1) Any legislator may seek an advisory opinion relating to the interpretation and enforcement of principles of ethics with respect to a situation affecting that legislator.

(2) A request for an advisory opinion shall be submitted in writing by the requesting legislator. The question may describe a real or hypothetical situation and request an advisory opinion establishing an appropriate standard of ethical conduct for that situation. Neither the contents nor the nature of a request for an opinion shall be revealed to any person outside of the committee or the staff to the committee except with the consent of the legislator requesting the opinion.

(3) The committee shall issue a written opinion regarding each inquiry or explain in writing why no opinion will be issued. Opinions shall be prospective only. Once issued, opinions shall be public documents, except that no opinion shall identify the requesting legislator without the legislator's consent.

(4) A requesting legislator may rely upon an advisory opinion of the interim legislative ethics committee, and any legislator acting in good faith reliance upon such an advisory opinion shall be immune from sanctions for conduct allowed by the opinion, unless the advisory opinion has been rejected by the relevant standing committee prior to the conduct in question.

(5) Committee advisory opinions shall be forwarded to the relevant standing committees for adoption or rejection in accordance with their respective procedures.

E. In dealing with charges brought against a legislator or a referral relating to the conduct of a legislator, the committee shall function through investigative and hearing subcommittees.

(1) Hearing subcommittees shall be comprised of the members of the committee from the house of the charged member that were not members of the investigative subcommittee, plus any additional members appointed pursuant to a legislative council-approved anti-harassment policy.

(2) Investigative subcommittees shall be comprised of an equal number from each party of the committee members of the charged member's respective house selected by the appropriate co-chair of the council in accordance with the recommendations of the appropriate majority and minority floor leaders, plus any additional members appointed pursuant to a legislative council-approved anti-harassment policy.

(3) Subcommittees may only act by a majority vote of their members.

(4) Special legal counsel, arbitrators, hearing officers or other professionals may be hired by the legislative council service as authorized by the investigative subcommittees, hearing subcommittees or the interim legislative ethics committee to assist the subcommittees or committee with their respective duties and responsibilities.

F. Except as provided in Subsection J, any charge seeking the discipline of a member of the legislature during the interim shall be in writing, under oath or affirmation, signed by a member of the legislature or a member of the public, verifying the truthfulness of the allegations in the complaint, addressed to the respective co-chair of the legislative council and filed with the legislative council service at the state capitol. The complaint shall state with reasonable particularity the relevant facts upon which the charge is based and the substantive ethics rule or law which the legislator is charged with violating.

G. The respective co-chair of the legislative council and the respective majority and minority floor leaders, plus any outside counsel included pursuant to a legislative council-approved anti-harassment policy, shall determine whether the complaint raises an issue implicating the charged member's role as a legislator under the substantive ethics rules or laws governing legislative conduct. If a complaint is made against a respective co-chair of the

legislative council, that person is ineligible to make the determination and the determination shall be made by the remaining members eligible to make the determination, plus any outside counsel included pursuant to a legislative council-approved anti-harassment policy. If a complaint is made against one of the floor leaders, that person is ineligible to make the determination and the respective whip shall replace the floor leader for that determination.

H. Unless all of the members making a determination as provided in Subsection G agree that the complaint does not raise an ethics issue implicating the charged member's role as a legislator under the applicable rules or laws, the complaint shall be forwarded to the interim legislative ethics committee. If all of the members agree that the complaint does not raise an ethics issue, the complaint shall be dismissed and a copy of the dismissal and an explanatory letter shall be sent to the complainant.

I. The members making a determination as provided in Subsection G may also determine whether, under the particular circumstances of the case, the matter is best left to the appropriate standing committee of the relevant house during the next session of the legislature. If all of the members agree that the matter is best left to the appropriate standing committee, the case shall be referred to that committee rather than to the interim legislative ethics committee.

J. During the interim, the speaker of the house of representatives or the president pro tempore of the senate, in conjunction with the respective majority and minority leaders, may also refer any ethics matter affecting a member of the respective house which might require investigation to the interim legislative ethics committee, including, when appropriate, requests by legislators which ask the speaker or the president pro tempore to provide for an investigation of the requesting legislator's own conduct. Such requests by a legislator shall be in writing addressed to the speaker or president pro tempore and shall state with reasonable particularity the conduct to be investigated and the reason for the request.

K. The complaint, referral or self-referral shall be delivered to the appropriate investigative subcommittee and shall be dealt with as follows.

(1) A legislator against whom a complaint is filed or with respect to whom a referral is made shall immediately be given a copy of the complaint or referral.

(2) The investigative subcommittee shall conduct a confidential investigation.

(a) If the investigative subcommittee finds no probable cause to believe a charge is warranted, it shall recommend that the hearing subcommittee close the investigation or dismiss the charge. Dismissal by the hearing subcommittee shall be communicated to the complainant, and the legislator charged shall not be subject to further charges by the complainant for the same event. However, if the investigative subcommittee finds no probable cause to believe a charge is warranted after an investigation is made pursuant to a legislative council-approved anti-harassment policy, the investigative subcommittee shall

immediately close the investigation, dismiss the complaint and so inform the complainant, the legislator against whom the complaint is filed and the appropriate ethics committee during the interim or standing committee during the session. The appropriate interim ethics committee receiving such notice during the interim shall issue a public report of the investigative subcommittee's determination within 10 days. The legislator charged shall not be subject to further charges by the complainant for the same event.

(b) Before the investigative subcommittee may move forward with a finding of probable cause with respect to a referral made pursuant to Subsection J of this section, it shall obtain a written statement under oath or affirmation verifying the truthfulness of the allegations in the complaint or subject of the referral from a person with firsthand knowledge of the subject of the referral.

(c) If the investigative subcommittee finds probable cause to believe that the charge is warranted, it shall recommend that the hearing subcommittee initiate a formal hearing. However, if the investigative subcommittee finds probable cause to believe a charge is warranted after an investigation is made pursuant to a legislative council-approved anti-harassment policy, the investigative subcommittee shall cause to be prepared and presented a charging document to the appropriate ethics subcommittee during the interim or standing committee during the session.

L. A formal hearing is initiated by the issuance of a written finding of probable cause by the hearing subcommittee and the service of a copy of that document on the legislator being charged. However, when the investigative subcommittee finds probable cause pursuant to a legislative council-approved anti-harassment policy, the hearing subcommittee shall set the matter for a formal hearing to occur within 45 days of the investigative subcommittee's finding of probable cause. A written finding of probable cause made by the investigative subcommittee pursuant to a legislative council-approved anti-harassment policy or made by the hearing subcommittee shall be limited to matters reasonably related to the original charge and shall become the formal charging document.

(1) A member or members of the investigative subcommittee or special legal counsel to the investigative subcommittee shall become the charging party and present the case against the legislator being charged. Members of the investigative subcommittee shall not serve as members of the hearing subcommittee and shall avoid ex parte communications with members of the hearing subcommittee regarding matters referred for investigation.

(2) The hearing subcommittee shall hear the matter. Members of the hearing subcommittee shall avoid ex parte communications regarding matters referred for hearing. Good cause excusal of a member from investigating, hearing or voting on a matter may be granted only by a majority vote of the hearing subcommittee. A vacancy shall be filled by the appointing authority in the same manner as the original appointment.

(3) If a charge is brought against a member of either house who has appointing, investigative or hearing responsibilities to carry out under this policy, that member shall be relieved of those responsibilities for purposes of that charge. The respective co-chair of the legislative council, in accordance with the recommendations of the respective floor leader, or succeeding appropriate party leader if necessary, shall appoint a substitute from the same political party to act in the stead of that member.

(4) If the charge involves conduct that is the subject of a pending civil or criminal proceeding in which the charged party is a defendant, the hearing subcommittee shall determine whether the public interest is best served by suspending the disciplinary proceedings pending resolution of the civil or criminal charges or whether portions of the formal proceedings shall be kept confidential, and notice thereof shall be forwarded to the appropriate standing committee of the relevant house.

M. At the formal hearing, all parties shall have an opportunity to be heard, to request the presence of witnesses and the production of relevant evidence and to cross-examine witnesses against them. The member being charged may be represented by counsel at the member's own expense.

N. At the time a formal hearing is scheduled, the hearing subcommittee shall establish and notify the parties of the preliminary schedule and the procedures to be followed, including those for making opening and closing statements and for the presentation of evidence. The hearing subcommittee shall not be bound by the rules of evidence applicable in the courts of New Mexico and may hire legal counsel to assist the subcommittee.

(1) The procedures shall include notice that all testimony shall be taken under oath and that the hearings shall be open to the public, except that the hearing subcommittee may designate specific information or portions of the hearing to be confidential in order to protect the integrity of an ongoing investigation or prosecution or to preserve the privacy of third parties or for any other lawful purpose.

(2) All testimony at the formal hearing shall be recorded. The recorded testimony, together with all other evidence, shall be compiled as the record of the formal hearing.

O. If the hearing subcommittee determines that the legislator being charged has not committed an offense that justifies the imposition of sanctions, it shall recommend in its report to the appropriate standing committee that the complaint be dismissed.

P. If the hearing subcommittee determines that the legislator has committed an offense that justifies the imposition of sanctions, it shall make such a recommendation, including the severity of the sanction, in its report to the appropriate standing committee. Recommended sanctions may include but are not limited to the following.

(1) Reprimand -- a reprimand is normally appropriate for a single, relatively minor act of unethical conduct.

(2) Censure -- censure is normally the appropriate sanction for more serious or repeated acts of unethical conduct, although repeated or aggravated violations may merit expulsion. Censure normally carries with it a stripping of leadership and chairmanship positions for the remainder of that legislator's current term in office.

(3) Expulsion -- the extraordinary power of expulsion generally should be reserved for very serious breaches of legal or ethical responsibilities of members that directly relate to their duties as members of the legislature and that impugn the integrity of the legislature, reflect adversely on the legislature or otherwise undermine public trust in the institution of the legislature.

Q. In accordance with the report from the hearing subcommittee and the respective house's rules, the appropriate standing committee shall either dismiss the complaint or refer the matter to the appropriate house of the legislature with the recommendations of the subcommittee, with the understanding that the ultimate authority lies with the appropriate house of the legislature pursuant to its rules. (As amended December 12, 2022.)

APPENDIX C

ANTI-HARASSMENT POLICY

It is the policy of the New Mexico Legislature that all persons who work for the legislature or participate in the legislative process, whether in the State Capitol or another legislative setting, be able to do so in an environment in which they are treated with dignity and respect and that is free from all forms of harassment or discrimination. Through adoption, implementation and enforcement of this policy and through continuing education and training, the Legislature will seek to prevent, correct and discipline any behavior that violates this policy.

Harassment

The Legislature prohibits harassment of any kind, including sexual harassment, and will take prompt and appropriate action in response to complaints or knowledge of violations of this policy. Harassment is any verbal or physical behavior that a reasonable person would find threatening, intimidating or coercive.

Harassment is a form of discrimination that is generally based on race, religion, color, national origin, age, ancestry, sex, sexual orientation, gender identity, physical or mental disability, serious medical condition or spousal affiliation. Harassment generally involves conduct, comment or display that a reasonable person would find insulting, intimidating, humiliating, hurtful, demeaning or degrading or that causes offense, discomfort or personal humiliation or embarrassment to a person or persons.

Harassment can include such behavior as slurs, demeaning jokes or comments, innuendoes, unwelcome compliments of a personal or intimate nature, use of racial or ethnic epithets or racially offensive words or phrases communicated in any language, cartoons, pictures, pranks, hazing, stereotyping comments, derogatory descriptions or other similar verbal, nonverbal or physical conduct. It is not necessary that the behavior be intentional to be considered harassment. Harassment can be a single serious incident or a series of incidents over time.

Under the Constitution of New Mexico, legal action generally cannot be taken against members of the Legislature for their legislative acts. Harassment does not include conduct, such as heated discussions, pointed questioning and vigorous attempts to persuade, which is generally accepted as a regular and necessary part of the legislative process.

Sexual Harassment

Sexual harassment includes forms of harassment that can be quid pro quo (i.e., this for that) or a hostile work environment (i.e., intimidating, offensive or demeaning environment in which to work) and warrants separate emphasis. Complaints of sexual harassment will be evaluated using a reasonable person standard.

Sexual harassment includes unwelcome sexual advances, requests for sexual favors and other verbal, nonverbal or physical conduct of a sexual nature when:

1. submission to such conduct is made, either explicitly or implicitly, a term or condition of a person's employment;
2. submission to or rejection of such conduct by a person is used as the basis for employment decisions affecting that person;
3. submission to or rejection of such conduct by a person is used as the basis for decisions or actions related to the support or opposition of legislation or other legislative processes; or
4. such conduct has the purpose or effect of interfering with a person's work or creating an intimidating, hostile or offensive working environment.

The following are examples of conduct that may constitute sexual harassment under this policy:

Verbal harassment — requests or demands for any type of sexual favor; repeated requests for a date; sexual innuendoes; suggestive comments; use of sexually offensive words or phrases in any language; jokes of a sexual nature; or "kidding", teasing and threats, any of which are unwelcome and sexual in nature.

Nonverbal harassment — distribution or display (including written, hard copy or electronic communications) of any graphic material, such as calendars, posters and cartoons, that is sexual in nature; or insulting sounds, leering, staring, whistling and obscene gestures.

Physical harassment — unwelcome physical contact, such as touching, tickling, pinching, hugging, patting, cornering, kissing, fondling and forced sexual intercourse or assault.

Reporting Harassment

A person who has experienced or observed harassment is strongly encouraged to identify the offensive behavior and advise the offender to stop and to report the harassment as provided in this policy. Legislative staff in supervisory positions have a duty to report harassment as provided in this policy. Early reporting and intervention have proven to be the most effective way to resolve actual or perceived incidents of harassment. Delays in reporting harassment can affect the ability to take appropriate action and resolve the matter. Accordingly, reports of harassment should be made as soon as possible after experiencing or observing the harassment so that prompt and appropriate action can be taken.

A legislative employee with a workplace harassment complaint may pursue the complaint with the U.S. Equal Employment Opportunity Commission and New Mexico's Human Rights Commission as provided by law.

Sexual assault should be reported to law enforcement immediately.

Confidentiality

A report or complaint of harassment and documents related to any investigation shall be maintained confidentially to the extent possible pursuant to applicable law, rule or policy, including the Inspection of Public Records Act. The expressed wishes of the person reporting or complaining will be considered in the context of the legal obligation to act on the allegations and the right of the respondent to obtain information.

No Retaliation

The Legislature prohibits any retaliation against any person who reports harassment or files a complaint or cooperates as a witness under this policy.

Complaint Procedure

Complaints against legislative staff

If the person alleged to have violated this policy is a legislative employee or working for the Legislature (including year-round, temporary or contract), the person making a complaint of harassment may report it to the employee's agency director, chief clerk or any legislative staff in a supervisory position. The person receiving the complaint shall promptly cause an investigation to be conducted and may delegate the investigation to a person with appropriate training, including an assistant or deputy director, a deputy chief clerk or outside counsel who is experienced in employment law and in the investigation of claims of harassment. Each complaint shall be investigated promptly, impartially and discreetly. The investigation shall begin within five business days of having received the complaint. The individual responsible for the investigation shall keep the complainant and respondent advised of the status of the investigation, notify them when the investigation is complete and advise them of corrective action to be taken, if any. Disciplinary action against a legislative employee who is found to have violated this policy includes verbal reprimand, written reprimand, suspension or termination. The complainant and the respondent may appeal within 10 calendar days, in which case an individual who is experienced in the investigation of harassment matters and was not involved in the initial investigation will review the investigation to determine if it is satisfactory or if further action is required. A record of each complaint and resolution shall be provided to and maintained by the Legislative Council Service.

Complaints against a person who is not a legislator or a legislative employee

If the person alleged to have violated this policy is not a legislator or a legislative employee (e.g., a member of the public, a lobbyist or a vendor), the person making the complaint shall report it to an agency director, chief clerk, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, one of the floor leaders of the House or Senate or legislative staff in a supervisory role. The person receiving the complaint shall promptly cause an investigation to be conducted and may delegate the investigation to a person with appropriate training, including an assistant or deputy director, a deputy chief clerk or outside counsel who is experienced in employment law and in the investigation of claims of harassment. Each complaint shall be investigated promptly, impartially and discreetly. The investigation shall

begin within five business days of having received the complaint. The individual responsible for the investigation shall keep the complainant and respondent advised of the status of the investigation, notify them when the investigation is complete and advise them of the corrective action to be taken, if any. The complainant and the respondent shall be informed of the results and may appeal within 10 days, in which case an individual who is experienced in the investigation of harassment matters and was not involved in the initial investigation, recommendation or corrective action will review the investigation to determine if it is satisfactory or if further action is required. Disciplinary action against a member of the public who is found to have violated this policy includes any appropriate action authorized by law, including a protective order, removal from or denying access to legislative buildings or activities and notifying the individual's employer or clients. A record of each complaint and resolution shall be maintained by the Legislative Council Service.

Complaints against a member of the Legislature

If the person alleged to have violated this policy is a member of the Legislature, and the person making the complaint is a legislative employee or working for the Legislature (including year-round, temporary or contract), the person making the complaint may report it to the employee's agency director, chief clerk or any legislative staff in a supervisory position. If the person making the complaint is anyone other than a legislative employee, the person making the complaint shall report it to the Director of the Legislative Council Service or the respective chief clerk. If the complaint is against a member of the House, the person receiving the complaint shall report it to the Speaker of the House of Representatives and the floor leaders of the House; if the complaint is against a member of the Senate, the person receiving the complaint shall report it to the President Pro Tempore of the Senate and the floor leaders of the Senate.

If the person making the complaint requests that the complaint be resolved informally, the respective legislative leaders shall investigate the complaint, and if the complaint is resolved to the satisfaction of the complainant and respondent, a record of the resolution shall be filed with and maintained by the Legislative Council Service, which shall remain confidential; provided that the record may be considered in a subsequent investigation to establish a pattern of conduct of a respondent. If the complaint is not resolved to the satisfaction of the person making the complaint or the person against whom a complaint is made, or the person making the complaint makes a formal written complaint, the respective legislative leaders shall consult with outside counsel who is experienced in discrimination law and in the investigation of claims of harassment. The respective leaders and outside counsel shall determine whether the complaint should be investigated further. If any one of the legislative leaders or outside counsel determines that the complaint should be investigated further, the complaint shall be forwarded to an investigative subcommittee of the appropriate ethics committee within five business days. The investigative subcommittee shall retain a licensed attorney, who has experience in harassment claims and is without any current or previous involvement with the matter, to serve as an additional voting member of the investigative subcommittee. That additional voting member shall serve as the chair of the investigative subcommittee.

The investigative subcommittee shall retain special counsel, who has experience in the investigation of harassment claims and shall not be the same person as outside counsel, to investigate the complaint and submit to the subcommittee a report containing the special

counsel's findings, conclusions and recommendations regarding further action. If the person making the complaint did not submit a formal written and sworn statement verifying the truthfulness of the allegations in the complaint, the special counsel must obtain such a written, sworn statement from the complainant before making a formal recommendation to the subcommittee. The special counsel shall recommend dismissal of a complaint if the person making the complaint does not submit such a written, sworn statement.

The special counsel conducting the investigation shall make every effort to complete the investigation and submit a report to the investigative subcommittee within 45 days from the date the special counsel is retained. If the report is not completed within 45 days, the special counsel shall advise the investigative subcommittee, complainant and respondent of the status of the investigation and the estimated time needed to complete the investigation. The special counsel shall similarly notify the investigative subcommittee, complainant and respondent every 15 days thereafter until the investigation is complete. Within 15 days of receipt of the special counsel's recommendations, the investigative subcommittee shall determine whether probable cause exists to believe a formal charge is warranted.

If the investigative subcommittee determines that probable cause does not exist, the investigative subcommittee shall immediately close the investigation, dismiss the complaint and so inform the complainant, the legislator against whom the complaint is filed and the appropriate ethics committee during the interim or standing committee during the session. The appropriate interim ethics committee receiving such notice during the interim shall issue a public report of the investigative subcommittee's determination within 10 days.

If the investigative subcommittee determines probable cause exists, it shall cause to be prepared and presented a charging document to the appropriate ethics subcommittee during the interim or standing committee during session. If the matter is referred to a standing committee, that standing committee shall handle the matter in accordance with its procedures and make a recommendation to the body. If the matter is referred to the appropriate ethics hearing subcommittee during the interim, that subcommittee shall set the matter for a formal hearing to occur within 45 days of the investigative subcommittee's finding of probable cause, unless good cause is shown to extend the hearing date. Before taking any action, the hearing subcommittee shall retain an attorney, retired judge or justice, who is without any current or previous involvement with the matter, to serve as an additional voting member of the hearing subcommittee. That additional voting member shall serve as the chair of the hearing subcommittee. The hearing subcommittee shall determine whether a preponderance of the evidence supports that the legislator against whom the complaint is filed has committed an offense that justifies the imposition of sanctions.

Sanctions against a legislator who is found to have violated this policy include reprimand, censure or expulsion. Sections 2-15-7 through 2-15-12 NMSA 1978; Senate Rules 9-13-1 through 9-13-6; House Rules 9-13-1 through 9-13-7; or Legislative Council Policy No. 15 shall apply to the process regarding complaints against legislators, as appropriate for the respective legislative body and whether in session or during the interim. An ethics committee or subcommittee reviewing a complaint pursuant to this policy during the session shall follow rules of procedure required of the respective House or Senate standing committees, in addition to the procedures provided in this policy. An ethics committee or subcommittee reviewing a complaint

pursuant to this policy during the interim shall follow the rules of procedure provided in Legislative Council Policy No. 15, in addition to the procedures provided in this policy. A record of each complaint and resolution shall be maintained by the Legislative Council Service.

Implementation of This Policy

The Legislature will ensure that this policy is disseminated and posted on the Legislature's website, included in the appropriate employee handbooks and posted throughout the State Capitol. The policy shall be reviewed at least once every two years. All legislators and employees must be trained on the policy for a minimum of four hours every two years by an individual or entity that specializes in harassment prevention.

A complaint of harassment or other information provided in support of the complaint that is found to be intentionally or recklessly dishonest or malicious will be deemed a violation of this policy. (As amended December 12, 2022.)

APPENDIX D

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to Section 13-1-191.1 NMSA 1978, any prospective contractor seeking to enter into a contract with any state agency or local public body must file this form with that state agency or local public body. The prospective contractor must disclose whether the prospective contractor, 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 (2) 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 (2) 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 fifty dollars (\$250) over the two (2)-year period.

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

The following definitions apply:

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

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

"Contract" means any agreement for the procurement of items of tangible personal property, services, professional services or construction.

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

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

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

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

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

DISCLOSURE OF CONTRIBUTIONS:

Contribution(s) Made By:

Relation to Prospective Contractor:

Name of Applicable Public Official(s):

Date Contribution(s) Made:

Amount(s) of Contribution(s):

Nature of Contribution(s):

Purpose of Contribution(s):

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 a representative during the two (2)-year period prior to the submission of this proposal.

Signature

Date

Title (Position)

For the purposes of this disclosure, "applicable public officials" include members of the New Mexico state legislature.