

**TORRANCE COUNTY  
STATE OF NEW MEXICO**

**REQUEST FOR PROPOSALS (RFP)**

**Grievance Hearing Officers**



**RFP TC-FY22-01**

**TORRANCE COUNTY PURCHASING  
205 S Ninth Street  
P.O. Box 48  
Estancia, NM 87016**

**July 26, 2021**

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## **I. INTRODUCTION**

### **A. PURPOSE OF THIS REQUEST FOR PROPOSALS**

The County of Torrance, State of New Mexico, on behalf of the Torrance County Board of County Commissioners, seeks sealed proposals from qualified parties for Professional Services Agreements as a Hearing Officer for grievances filed pursuant to the Torrance County Personnel Ordinance. It is the intent of the County to award multiple Agreements for these services.

### **B. SUMMARY SCOPE OF WORK**

The successful Offeror(s) shall enter into Professional Services Agreements as a Hearing Officer for Grievances that are filed pursuant to the County's Personnel Ordinance. The Agreements will be between the County, the employee challenging the disciplinary actions or application of the County's Personnel Ordinance and the Offeror (Contractor). All potential Offerors are encouraged to read this Request for Proposals carefully, especially mandatory requirements. The full Scope of Work is included as part of the Professional Services Contract (see Appendix B).

### **C. SCOPE OF PROCUREMENT**

The scope of the procurement consists of providing Professional Services as a Grievance Hearing Officer pertaining to the Formal Grievance Procedure (Section 9.4) of the Torrance County Personnel Ordinance. The duration of the contract resulting from this RFP shall be from the date of award through June 30, 2025. The contract will automatically renew on an annual basis on July 1, for up to two (3) additional, one (1) year terms unless terminated as provided by the contract or law. In accordance with Section 13-1-150 NMSA 1978, no term for a professional services contract, including extensions and renewals, shall exceed four (4) years, except as set forth in Section 13-1-150 NMSA 1978. This procurement may result in a multiple source award.

### **D. PROCUREMENT OFFICER**

The County has designated a Procurement Officer who is responsible for this procurement and whose name, address, and telephone number are listed below. Any inquiries or requests regarding this procurement should be submitted to the Procurement Officer in writing. Offerors may contact ONLY the Procurement Officer regarding the procurement. Other County employees do not have the authority to respond on behalf of the County.

**Noah J. Sedillo**  
Torrance County Purchasing

<p><u>Delivery Address (Including proposal delivery):</u> 205 S Ninth Street // Estancia, NM 87016</p>	<p><u>Mailing Address:</u> P.O. Box 48 // Estancia, NM 87016</p>
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Phone: (505) 544-4730  
 Fax: (505) 384-5294  
 E-mail: njsedillo@tcnm.us

NOTE: All deliveries via express carrier (INCLUDING PROPOSAL DELIVERY) should be addressed to Noah J. Sedillo’s Delivery Address, above.

**E. DEFINITION OF TERMINOLOGY**

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

“Board of County Commissioners” (also “BCC”) means the elected board in whom all powers of the County are vested and who are responsible for the proper and efficient administration of County government.

"Close of Business" means 5:00 P.M. Mountain Standard Time (MST) or Mountain Daylight Time (MDT), whichever is in effect on the date specified.

"Contract" or “Agreement” means a written agreement for the procurement of items of tangible personal property or services.

"Contractor" means a successful Offeror who enters into a binding contract.

"County" means the County of Torrance, State of New Mexico.

"Determination" means the written documentation of a decision of the Procurement Officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

“Desirable" refers to the terms "may", "can", "should", "preferably" or "prefers" which identify a desirable or discretionary item or factor. (As opposed to a “mandatory” item or factor.)

"Evaluation Committee" means a body appointed by County management to perform the evaluation of Offeror proposals.

"Evaluation Committee Report" means a report prepared by the Procurement Officer and the Evaluation Committee for submission to appropriate approval authorities for contract award that contains all written determinations resulting from the conduct of a procurement requiring the evaluation of competitive sealed proposals.

"Finalist" is defined as an Offeror who meets all the mandatory specifications of this Request for Proposal and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

"Mandatory" refers to the terms "must", "shall", "will", "is required" or "are required" which identify a mandatory item or factor. (As opposed to a "desirable" item or factor.) Failure to meet a mandatory item or factor may result in the rejection of the Offeror's proposal.

"Local public body" means every political subdivision of the State of New Mexico and the agencies, instrumentalities and institutions thereof, including two-year post-secondary educational institutions, school districts and local school boards and municipalities. "Offeror" is any person, corporation, or partnership who chooses to submit a proposal.

"Procurement Officer" means the person or designee authorized by the County to manage or administer a procurement requiring the evaluation of competitive sealed proposals.

"Procuring agency of the County" means the department or other subdivision of the County of Torrance that is requesting the procurement of services or items of tangible personal property.

"Purchase Order" or "PO" means the document which directs a contractor to deliver items of tangible personal property or services pursuant to an existing, valid contract.

"Purchasing" means the County of Torrance Purchasing Office or the Torrance County Purchasing Officer.

"Purchasing Agent" or "PA" means the Purchasing Office for the County of Torrance.

"Request for Proposals" or "RFP" means all documents, including those attached or incorporated by reference, used for soliciting proposals.

"Responsible Offeror" means an Offeror who submits a responsive proposal and who has furnished required information and data to prove that their financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services or items of tangible personal property called for in this proposal.

"Responsive Offer" or "Responsive Proposal" means an offer or proposal which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to, price, quality, quantity and delivery requirements.

"Statement of Compliance" and "Statement of Concurrence" mean an express statement, by the Offeror in their proposal that they agree with and agree to the stated requirement(s). Possible examples of acceptable responses include "The [NAME HERE Company] agrees to comply with this requirement." and "The [NAME HERE Company] concurs with this requirement."

## **F. RESIDENT/VETERAN BUSINESS PREFERENCE**

1. Resident Business Preference

The New Mexico Procurement Code provides for preference for resident businesses and Contractors under certain conditions. If applicable, the preference will be provided to those Offerors that have provided a valid resident business preference certificate with their bid, as required by 13-1-22 NMSA 1978.

In order for a Bidder to receive preference as a resident business, that Bidder must submit a copy of their resident business preference certificate with their bid. The preference certificate must have been issued by the New Mexico Taxation and Revenue Department. Providing only a preference number or a copy of the application is not acceptable.

For more information and application forms, go to:

<http://www.tax.newmexico.gov/Businesses/Pages/In-StatePreferenceCertification.aspx>

2. Resident Veterans Preference

Effective July 1, 2012, certain preferences are available to Resident Veteran Businesses. [Please see Section V.C.4 for more information and especially note Appendix F.] In order for a Bidder to receive preference as a resident veteran business, that Bidder must submit a copy of their resident veteran business preference certificate with their bid. The preference certificate must have been issued by the New Mexico Taxation and Revenue Department. Providing only a preference number or a copy of the application is not acceptable.

For more information and application forms, go to:

<http://www.tax.newmexico.gov/Businesses/Pages/In-StatePreferenceCertification.aspx>

**G. PROCUREMENT LIBRARY**

The Procurement Library consists of the following documents which may be accessed by their associated Internet links:

**- New Mexico Procurement Code**

<https://laws.nmonesource.com/w/nmos/Chapter-13-NMSA-1978#!fragment//BQCwhgziBcwMYgK4DsDWszIQewE4BUBTADwBdoByCgSgBplfTCIBFRQ3AT0otojlzYANKIDCSNNACEyPoTC4EbDtypyFCAMp5SAIW4AlAKIAZIwDUAggDIRR2qTAAjaKWxxq1IA>

<https://www.torrancecountynm.org/uploads/Downloads/Finance%20Department/2019-38%20Purchasing%20Policy.pdf>

## II. CONDITIONS GOVERNING THE PROCUREMENT

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

### A. SEQUENCE OF EVENTS

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

ACTION	DATE
1. Issue RFP	Monday, 7/26/2021
2. Return of “Acknowledgment of Receipt” Form for Distribution List	Thursday, 8/6/2021 5:00 pm MDT
3. Deadline to Submit Additional Questions	Tuesday, 8/10/2021 5:00 pm MDT
4. Response to Written Questions/ RFP Amendments	Thursday, 8/12/2021 5:00 pm MDT
<b>5. Submission of Proposal</b>	<b>Monday, 8/23/2021 2:00 pm MDT</b>
6. Proposal Evaluation	Tuesday, 8/25-26/2021
7. Contract Award*	Wednesday, 9/08/2021
8. Protest Deadline	Thursday, 9/23/2021

\*Contract award is subject to approval of the Board of County Commissioners or Designee.

### B. EXPLANATION OF EVENTS

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

#### 1. Issue RFP

This RFP is being issued by the Torrance County Purchasing Officer on behalf of the County of Torrance and the Torrance County Board of County Commissioners.

#### 2. Return of “Acknowledgment of Receipt” Form for Distribution List

Potential Offerors should hand deliver or return by facsimile or e-mail or registered or certified mail the “Acknowledgement of Receipt” form that accompanies this document (See Appendix A) to have their organization placed on the procurement distribution list. The form should be signed by an authorized representative of the organization, dated and

returned by 5:00 PM MDT on the date indicated in Section II.A (Sequence of Events), above.

The procurement distribution list will be used to notify those that submitted the form of any written responses to questions and any RFP amendments. Failure to return this form shall constitute a presumption of receipt and rejection of the RFP, and the potential Offeror's organization name shall not appear on the distribution list.

3. Deadline to submit additional written questions

Potential Offerors may submit additional written questions as to the intent or clarity of this RFP until 5:00 PM MDT on the date indicated in Section II.A (Sequence of Events), above. All written questions must be sent by e-mail to the Procurement Officer (See Section I, Paragraph D.)

4. Response to written questions/RFP Amendments

Written responses to written questions and any RFP amendments will be posted to the Torrance County Purchasing Office web site ([Torrancecountynm.org](http://Torrancecountynm.org), via the "Contact Us" tab under the "RFB & RFP" tab). Notification of such posting shall be provided to all potential Offerors that have returned the "Acknowledgement of Receipt" Form found at Appendix A. A new "Acknowledgement of Receipt" Form will accompany the posted distribution package. The form should be signed by the Offeror's representative, dated, and hand-delivered or returned by facsimile or e-mail or by registered or certified mail by the date indicated thereon. Failure to return this form shall constitute a presumption of receipt and withdrawal from the procurement process.

5. Submission of Proposal

**OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT OFFICER OR DESIGNEE **NO LATER THAN 2:00 PM MDT ON THE DATE INDICATED** IN SECTION II.A (SEQUENCE OF EVENTS), ABOVE. **PROPOSALS RECEIVED AFTER THIS DEADLINE FOR ANY REASON WILL NOT BE ACCEPTED OR CONSIDERED.****

The date and time of receipt will be recorded on each proposal. Proposals must be addressed and delivered to the Procurement Officer at the delivery address listed in Section I, Paragraph D. Proposals must be sealed and should be labeled on the outside of the package to clearly indicate that they are in response to the "Grievance Hearing Officers," should reference "RFP TC-FY22-01" and should indicate the deadline for receipt (due date and time). Proposals submitted by facsimile or other electronic means **WILL NOT BE ACCEPTED.**

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

#### 6. Proposal Evaluation

The evaluation of proposals will be performed by an Evaluation Committee appointed by County management. This process will take place during the time period indicated in Section II.A (Sequence of Events), above. During this time, the Procurement Officer may at his option initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors. The Evaluation Committee may select and the Procurement Officer may notify finalist Offerors. Only finalists will be invited to participate in the subsequent steps of the procurement. The Evaluation Committee reserves the right not to utilize the finalist process if they deem it in the best interest of the County.

#### 7. Contract Award

After review of the Evaluation Committee Report, interview, and the tentative contract, the Purchasing Officer anticipates the Board of County Commissioners will award the contract on the date indicated in Section II.A (Sequence of Events), above. This date is subject to change at the discretion of the Purchasing Officer or the Board of County Commissioners.

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

#### 8. Protest Deadline

Any protest by an Offeror must be timely, in conformance with, and will be governed by Sections 13-1-172 through 13-1-176 NMSA 1978. The fifteen (15) day protest period for timely Offerors shall begin on the day following contract award and will end at 5:00 PM MDT on the date indicated in Section II.A (Sequence of Events), above. Protests must be written and must include the name and address of the protestor and the Request for Proposals number. It must also contain a statement of grounds for protest including appropriate supporting exhibits, and it must specify the ruling requested from the Purchasing Officer. The protest must be delivered to the Purchasing Officer.

Torrance County Purchasing  
Attn. Noah J. Sedillo  
205 S Ninth Street  
PO Box 48  
Estancia, New Mexico 87016

NOTE: Protests received after the deadline will not be accepted.

### **C. GENERAL REQUIREMENTS**

This procurement will be conducted in accordance with the New Mexico Procurement Code (131-28 NMSA 1978) and Torrance County Procurement Policy (Resolution 2018-32).

#### 1. Acceptance of Conditions Governing the Procurement

Offerors must indicate their acceptance of the Conditions Governing the Procurement in the letter of transmittal form (see Appendix D). Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.

#### 2. Incurring Cost

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

#### 3. Prime Contractor Responsibility

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

#### 4. Subcontractors

Use of subcontractors must be clearly explained in the proposal and each must be identified by name. The prime contractor shall be wholly responsible for contract performance whether or not subcontractors are used. Substitution of subcontractors, after contract award, must receive prior written approval of the County Purchasing Office.

#### 5. Amended Proposals

An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. County personnel will not merge, collate, or assemble proposal materials.

## 6. Offeror's Rights to Withdraw Proposal

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

## 7. Proposal Offer Firm

Responses to this RFP, including proposal prices, will be considered firm for ninety (90) days after the due date for receipt of proposals or sixty (60) days after the due date for the receipt of a best and final offer, if one is solicited.

## 8. Disclosure of Proposal Contents

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

Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the remaining portions of the proposal. Confidential data is normally restricted to confidential financial information concerning the Offeror's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, 57-3A-I to 57-3A7 NMSA 1978. The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.

If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, the Purchasing Officer shall examine the Offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continued prohibition on the disclosure of confidential data.

9. No Obligation

This procurement in no manner obligates Torrance County or any of its departments or other subdivisions to the eventual lease, purchase, etc., of any tangible personal property offered or services proposed until a valid written contract is approved by the Purchasing Officer and other required approval authorities.

10. Termination

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the County determines such action to be in the best interest of the County.

11. Sufficient Appropriation

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

12. Legal Review

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

13. Governing Law

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

14. Basis for Proposal

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

15. Contract Terms and Conditions

The contract between the County the contractor will follow the format specified by the County and contain the terms and conditions set forth in Appendix B, Professional Services Contract. However, the County reserves the right to negotiate with a successful Offeror provisions in addition to those contained in this RFP. The contents of this RFP, as revised or supplemented, and the successful Offeror's proposal will be incorporated into and become part of the contract.

Should an Offeror object to any of the County's terms and conditions, as contained in this Section or in Appendix B, that Offeror must propose specific alternative language. The County may or may not accept the alternative language, at the County's sole discretion. General references to the Offeror's terms and conditions or attempts at complete substitutions are not acceptable to the County and could lead to disqualification of the Offeror's proposal.

Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording in order for the proposed alternate wording to be considered.

#### 16. Offeror's Terms and Conditions

Offeror's must submit with their proposal a complete set of any additional terms and conditions which they request be included in a contract negotiated with the County. The County may or may not accept the additional language, at the County's sole discretion.

#### 17. Contract Deviations

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

#### 18. Offeror Qualifications

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

#### 19. Right to Waive Minor Irregularities

The Evaluation Committee reserves the right to waive minor irregularities. The Evaluation Committee also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the same mandatory requirements or doing so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

20. Change in Contractor Representatives

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

21. Notice

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. The State of New Mexico criminal statutes also impose felony penalties for bribes, gratuities and kick-backs.

22. County Rights

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

23. Ownership of Proposals

All documents submitted in response to the RFP shall become the property of the County. However, any technical or user documentation submitted with the proposals of non-selected Offerors may be returned after the expiration of the protest period, by request, at the expense of the Offeror.

24. Ambiguity, Inconsistency or Errors in RFP

Offerors shall promptly notify the Procurement Officer, in writing, of any ambiguity, inconsistency or error which they discover upon examination of the RFP.

25. Competition

By submitting a proposal, Offeror certifies that they have not, either directly or indirectly, entered into any action in restraint of full competition in connection with the proposal submitted to the County.

26. Use by Other Government Entities

By submitting a proposal, Offeror indicates that they understand and agree that other government entities within the State of New Mexico, or as otherwise allowed by their governing directives, may contract for the goods or services included in this procurement document with the awarded contractor(s). Contractual engagements accomplished under this provision shall be solely between the awarded vendor and the contracting government entity with no obligation or liability incurred by Torrance County.

27. Confidentiality

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

28. Electronic Mail Address Required

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail address to receive this correspondence.

29. Use of Electronic Versions of this RFP

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

### **III. RESPONSE FORMAT AND ORGANIZATION**

#### **A. NUMBER OF RESPONSES**

Offeror's may submit only one (1) response to this RFP.

#### **B. NUMBER OF COPIES**

Offerors shall deliver four (4) identical copies of their proposal to the location specified in Section I, Paragraph D on or before the closing date and time for receipt of proposals. (Identical copies are defined as the original plus the number of additional copies needed to fulfill the requirement. For example, a requirement for four (4) identical copies would be fulfilled by submitting the original and three [3] copies of the original.) The original copy should be clearly marked "ORIGINAL" on the front cover and shall contain original signatures. (An exception to this requirement is made for the "Cost Response Form" and the "Campaign Contribution Disclosure Form". See Section III.C.1, immediately below.)

#### **C. PROPOSAL FORMAT**

All proposals must be typewritten on standard 8 1/2 x 11 paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within a binder (or bound) with tabs delineating each section.

##### **1. Proposal Organization**

The proposal should be organized and indexed in the following format and must contain, as a minimum, all listed items in the sequence shown unless otherwise indicated.

- a. Letter of Transmittal Form (See Appendix D)
- b. Valid In-State Resident or Veteran Preference Certificate (Optional at Offeror's discretion. See Section I.F.)
- c. Table of Contents
- d. Cost Response Form (See Appendix C)  
Campaign Contribution Disclosure Form (See Appendix F)
- e. Proposal Summary (Optional)
- f. Response to Specifications

Within each section of their proposal, Offerors should address the items in the order in which they appear in this RFP. Any forms provided in the RFP must be thoroughly completed and included in the appropriate section of the proposal. Unless otherwise

specified in this RFP, all discussion of proposed costs, rates or expenses must occur only on the Cost Response Form, Appendix C.

Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

A proposal summary may be included by Offerors to provide the Evaluation Committee with an overview of the technical and business features of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the Offeror's proposal.

## 2. Letter of Transmittal Form

The Letter of Transmittal Form at Appendix D **must** be completed, signed and included with the Offeror's proposal.

## 3. Other Supporting Materials

Offerors may attach other materials which they feel may improve the quality of their responses. However, these materials may not be reviewed by members of the Evaluation Committee and **will not** be scored.

## IV. SPECIFICATIONS

### A. INFORMATION

#### 1. In-State Resident or Veteran Preference

A valid In-State Resident or Veteran Preference Certificate issued by the New Mexico Taxation and Revenue Department **must** be included with the proposal if the Offeror wishes to receive the additional points available as a qualifying resident or veteran business. See Section I.F, above, for more information.

#### 2. Response to Requirements

Each mandatory requirement in sections IV.B.1 through IV.B.13, below, requires a vendor response, as indicated. Failure to respond to, or properly comply with, a mandatory requirement may result in the disqualification of the Offeror's proposal.

### B. MANDATORY REQUIREMENTS

#### 1. Letter of Transmittal Form (0 Points)

Offeror must complete and submit the “Letter of Transmittal Form”, found at Appendix D, with their proposal. The form must be signed and dated by an individual authorized to contractually bind the party. This is a pass/fail requirement.

#### 2. Capability and Agreement to Perform (0 Points)

Offeror certifies that they are capable and qualified to provide the products or services required by this RFP and agrees to perform the Scope of Work as specified in the Contract at Appendix B. A statement of concurrence is required. This is a pass/fail requirement.

#### 3. Campaign Contribution Disclosure Form (0 Points)

Offeror must complete and sign the Appendix F, Campaign Contribution Disclosure Form – whether any applicable contribution has been made or not. This form must be submitted with your proposal whether an applicable contribution has been made or not. Note that there are two (2) different signature sections within the form. (For purposes of this requirement, the applicable elected public officials within the County of Torrance are BCC Chairmen Ryan Schwebach; Commissioners Kevin McCall and LeRoy Candelaria; Assessor Jesse Lucero; Clerk Yvonne Otero; Probate Judge Josie Chavez; Sheriff Martin Rivera; and Treasurer Tracy Sedillo.) This is a pass/fail requirement.

4. Conflict of Interest Affidavit (0 Points)

Offerors must include signed and completed Conflict of Interest Affidavit Form (see Appendix E) with RFP documents. The Offeror 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 Offeror certifies that the requirements of the Governmental Conduct Code Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee or former state employee have been followed. This is a pass/fail requirement.

5. Tax Obligations (0 Points)

Bidders/Proposers are required to certify that they are not delinquent in the payment of their tax obligations and that they will not become delinquent in the payment of their tax obligations during the term of any contract that may be awarded pursuant to this solicitation. Failure to maintain compliance, or to timely cure defects, may be cause for termination of a contract or initiation of debarment proceedings against the noncompliant contractor. Bids/Proposals that fail to comply with the certification requirements will be considered non-responsive and excluded from further consideration. A statement so certifying is required. This is a pass/fail requirement.

6. Experience (0 Points)

Per the Torrance County Personnel Ordinance, in order to be eligible to serve as a hearing officer, the respondents must have at least three (3) years experience in the area of employment law or human resource management, experience in conducting administrative hearings, and the ability to render and write unbiased and impartial decisions. This is a pass/fail requirement.

7. References (0 Points)

Provide a minimum of three (3) references for the same and/or similar services outlined in this RFP, to include: Contact Name, Address, Telephone Number and/or Email. This is a pass/fail requirement.

8. Accessibility (50 Points)

If awarded the contract, Contractor must be available to respond to County queries Monday – Thursday from 8 am to 5 pm, but not limited to. Contractor must be able to travel to and throughout Torrance County to facilitate formal, grievance hearing proceedings. Offeror must explain, in narrative format, how they will meet this requirement with a focus on their accessibility.

9. Administrative Hearings (200 Points)

Knowledge of standards of review and evidentiary standards for administrative hearings.

10. Impartiality (150 Points)

Ability to render and write expedient and unbiased decisions and to formulate findings of fact and conclusions of law based on oral and documentary evidence. Written case examples may be provided.

11. Labor and Employment Law (300 Points)

Labor-management and employment relations experience or labor and employment law experience.

12. Standards of Review and Evidentiary Standards (250 Points)

Knowledge of standard of review and evidentiary standards for administrative hearings: Demonstrated knowledge of standard of review and evidentiary standards for administrative hearings.

13. Cost Response Form (50 Points)

Offeror must complete and submit the Cost Response Form, at Appendix C, providing proposed annual contract cost for accomplishing the scope of work. State gross receipts and local option taxes (if any) shall not be included in the proposed cost. Such taxes shall be separately reimbursed to the contractor by the County. A schedule of actual fees per hour is requested as a supplement to the Cost Response Form; however, it does not replace or fulfill the Cost Response Form requirement. Offeror must state their proposed fees per hearing on an hourly basis and a daily fee; the hearing officer will not be responsible for the cost of court reporting services or the cost of a hearing room, but will not be reimbursed for any costs or expenses. Points will be allocated by adding the sum.

**C. DESIRABLE REQUIREMENTS**

There are no desirable requirements associated with this procurement.

## V. EVALUATION

### A. EVALUATION POINT SUMMARY

The following is a summary of evaluation factors with point value assigned to each or a Pass/Fail evaluation. These, along with the general requirements, will be used in the evaluation of individual Offeror proposals.

REF.	REQUIREMENT	POINTS AVAIL.
IV.B.1	Letter of Transmittal Form	0*
IV.B.2	Capability and Agreement to Perform	0*
IV.B.3	Campaign Contribution Disclosure Form	0*
IV.B.4	Conflict of Interest Affidavit	0*
IV.B.5	Tax Obligations	0*
IV.B.6	Experience	0*
IV.B.7	References	0*
IV.B.8	Accessibility	50
IV.B.9	Administrative Hearings	200
IV.B.10	Impartiality	150
IV.B.11	Labor and Employment Law	300
IV.B.12	Standards of Review and Evidentiary Standards	250
IV.B.13	Cost Response Form	50
TOTAL		1,000

\*Pass/Fail only.

Points will be awarded based on the evaluation factors found in IV.B.8 through IV.B.13, below, as indicated.

**B. EVALUATION FACTORS: MANDATORY REQUIREMENTS**

1. Letter of Transmittal Form (0 Points)

Pass/Fail only.

2. Capability and Agreement to Perform (0 Points)

Pass/Fail only.

3. Campaign Contribution Disclosure Form (0 Points)

Pass/Fail only.

4. Conflict of Interest Affidavit (0 Points)

Pass/Fail only.

5. Tax Obligations (0 Points)

Pass/Fail only.

6. Experience (0 Points)

Demonstrate through written narrative a minimum of three (3) years' experience with labor and employment relations or labor and employment law. A resume will suffice for this requirement provided it includes sufficient detail regarding the three (3) years minimum experience. If more than one (1) hearing officer of a law firm is being proposed, a written narrative or resume must be provided for each. This is a pass/fail requirement. This is a Pass/Fail requirement.

7. References (0 Points)

Provide a minimum of three (3) references for the same and/or similar services outlined in this RFP, to include: Contact Name, Address, Telephone Number and/or Email. This is a Pass/Fail requirement.

8. Accessibility (50 Points)

Points will be awarded based on the Offeror's ability to demonstrate ease of reaching the Offeror when needed, ability to facilitate formal, grievance hearing proceedings, travel throughout Torrance County, but not limited to.

9. Administrative Hearings (200 Points)

Points will be awarded based on the Offeror's ability to demonstrate knowledge of standards of review and evidentiary standards for administrative hearings.

10. Impartiality (150 Points)

Points will be awarded based on the Offeror's ability to demonstrate the ability to render and write expedient and unbiased decisions and to formulate findings of fact and conclusions of law based on oral and documentary evidence. Written case examples may be provided.

11. Labor Employment Law (300 Points)

Points will be awarded based on the Offeror's ability to demonstrate knowledge labor-management and employment relations experience or labor and employment law experience.

12. Standards of Review and Evidentiary Standards (250 Points)

Points will be awarded based on the Offeror's ability to demonstrate knowledge of standard of review and evidentiary standards for administrative hearings: Demonstrated knowledge of standard of review and evidentiary standards for administrative hearings.

13. Cost Response Form (50 Points)

Offeror must complete and submit the Cost Response Form, at Appendix C, providing proposed annual contract cost for accomplishing the scope of work. State gross receipts and local option taxes (if any) shall not be included in the proposed cost. Such taxes shall be separately reimbursed to the contractor by the County. A schedule of actual fees per hour is requested as a supplement to the Cost Response Form; however, it does not replace or fulfill the Cost Response Form requirement. Offeror must state their proposed fees per hearing on an hourly basis and a daily fee; the hearing officer will not be responsible for the cost of court reporting services or the cost of a hearing room, but will not be reimbursed for any costs or expenses. Points will be allocated by adding the sum.

## **C. EVALUATION PROCESS**

### **1. Initial Review**

All Offeror proposals will be reviewed for compliance with the mandatory requirements stated within the RFP. Proposals deemed non-responsive to any mandatory requirement will be eliminated from further consideration.

### **2. Clarifications**

The Procurement Officer may contact the Offeror for clarification of the response as specified in Section II, Paragraph B.6.

### **3. Other Information Sources**

The Evaluation Committee may use other sources of information to perform the evaluation as specified in Section II, Paragraph C.18.

### **4. Resident Business/Contractor Preference**

13-1-21 NMSA 1978 provides for preference for resident businesses and contractors under certain conditions. If applicable, the preference will be provided to those Offerors that have provided a valid resident business preference certificate or a valid resident contractor certificate with their proposal, as required by 13-1-22 NMSA 1978.

### **5. Scoring and Contract Award Recommendation**

Responsive proposals will be evaluated and assigned a point value based on the factors in Section V. Finalist Offerors will be invited to participate in a panel interview with the RFP Evaluation Committee. The responsible Offeror whose proposal is most advantageous to the County, taking into consideration the evaluation factors in Section V, will be recommended for contract award to the Purchasing Officer, and any other required approving authorities. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

**APPENDIX A**

**ACKNOWLEDGEMENT OF RECEIPT FORM**

Request for Proposals

**PROFESSIONAL SERVICES FOR TORRANCE COUNTY**

**RFP TC-FY22-01  
Grievance Hearing Officers**

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

**The acknowledgment of receipt should be signed and returned (by fax, e-mail, courier or hand delivery) to the Procurement Officer no later than August 6, 2021.**

*The firm listed below **does/does not** (circle one) intend to respond to this Request for Proposals.*

OFFEROR: \_\_\_\_\_

REPRESENTED BY: \_\_\_\_\_ TITLE: \_\_\_\_\_

E-MAIL ADDRESS: \_\_\_\_\_

PHONE NO. \_\_\_\_\_ FAX NO.: \_\_\_\_\_

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

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

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

Please return to:

**Noah J. Sedillo**  
Torrance County Purchasing  
205 S Ninth Street  
PO Box 48  
Estancia, NM 87016  
Phone: (505) 544-4730  
Fax: (505) 384-5294  
E-mail: njsedillo@tcnm.us

## APPENDIX B

### PROFESSIONAL SERVICES CONTRACT FOR TORRANCE COUNTY

#### Grievance Hearing Officers RFP TC-FY22-02

THIS AGREEMENT is made and entered into by and between the County of Torrance, \_\_\_\_\_, hereinafter referred to as the "County" and **NAME OF CONTRACTOR**, hereinafter referred to as the "Contractor", and is effective as of the date set forth below upon which it is executed by the Purchasing Agent and the Board of County Commissioners.

IT IS AGREED BETWEEN THE PARTIES:

#### **1. Scope of Work.**

The successful Offeror shall provide the services as a Hearing Officer, and shall conduct administrative hearings at the final administrative level that are related to disciplinary action and the application of the County's Personnel Ordinance as follows:

1. Grievances involving interpretation of the County of Torrance's Personnel Ordinance; and
2. Grievances involving disciplinary actions of suspension, demotion, and dismissal of employees arising from the County's Personnel Ordinance.
3. Other related services required of the successful Offeror(s):
  - a. Scheduling of hearings.
  - b. Conducting any necessary pre-hearing conferences;
  - c. Conducting full evidentiary hearings; and

Providing, within thirty (30) calendar days of the conclusion of the hearing, or submittal of past arbitration briefs, written findings of fact and conclusions of law and final decisions.

#### **2. Compensation.**

For performing the Services specified in Section 1 of this Agreement, the County agrees to pay Contractor on a monthly basis the sum of \$\_\_\_\_\_/hour, inclusive of all salary, supplies, mileage/per-diem, telephone allowance, and administrative costs, plus applicable New Mexico Gross Receipts Tax. Compensation will be disbursed as follows: Contractor will provide a detailed invoice describing services provided and will be compensated at the rate of \$\_\_\_\_\_/hour, plus New Mexico Gross Receipts Tax, following the end of professional services.

Such amount shall be payable monthly upon the submission and approval of an invoice for Torrance County Manager's Office. Payments to Contractor shall be made as

determined by the budgetary and fiscal guidelines by the County. The County will send payment within 45 days to the County’s receipt of the invoice to:

Contractor:

\_\_\_\_\_  
Address:

\_\_\_\_\_  
City, State, Zip  
\_\_\_\_\_

**THE FINAL INVOICE MUST BE RECEIVED BY THE TORRANCE COUNTY MANAGER’S OFFICE NO LATER THAN JUNE 15, 2022. INVOICES RECEIVED AFTER SUCH DATE WILL NOT BE PAID.**

**3. Term.**

This professional services agreement is for one (1) year from the date of award. This professional services contract will be for one year, with an automatic renewal. However, Torrance County reserves the right to renew this contract for up to three (3) additional one (1) year terms as provided by this Contract or law and with the concurrence of contractor. In accordance with Section 13-1-150 NMSA 1978, no term for a professional services contract, including extensions and renewals, shall exceed four (4) years, except as set forth in Section 131-150 NMSA 1978. This procurement may result in a multiple source award.

**4. Termination.**

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the County’s sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor’s receipt of the notice of termination, if the County is the terminating party, or the Contractor’s sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party’s liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the County 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 government funds or due to the Appropriations paragraph herein. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE COUNTY’S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR’S DEFAULT/BREACH OF THIS AGREEMENT.

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

**5. Appropriations.**

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

**6. Status of Contractor.**

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

**7. Assignment.**

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

**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 County. No such subcontract

shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the County. In all cases, the contractor is solely responsible for fulfillment of this Agreement.

**9. Release.**

Final payment of the amounts due under this Agreement shall operate as a release of the procuring agency of the County, its officers and employees, and the County of Torrance from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

**10. Confidentiality.**

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

**11. Product of Service -- Copyright.**

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

**12. Conflict of Interest; Governmental Conduct Act.**

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, 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.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with Section 10-16-4.3 NMSA 1978, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any County employee while such employee was or is employed by the County and participating directly or indirectly in the County's contracting process;

2) this Agreement complies with Section 10-16-7(B) NMSA 1978 because (i) the Contractor is not a public officer or employee of the County; (ii) the Contractor is not a member of the family of a public officer or employee of the County; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public

officer or employee of the County, a member of the family of a public officer or employee of the County, or a business in which a public officer or employee of the County or the family of a public officer or employee of the County has a substantial interest, public notice was given as required by Section 10-16-7(B) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;

3) in accordance with Section 10-16-8(C) NMSA 1978, (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the County within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the County whose official act, while in County employment, directly resulted in the County's making this Agreement;

4) in accordance with Section 10-16-13 NMSA 1978, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

5) in accordance with Section 10-16-3 and Section 10-16-13.3 NMSA 1978, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the County.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the County relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the County if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the County and notwithstanding anything in the Agreement to the contrary, the County may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B).

**13. Amendment.**

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

**14. Merger.**

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No

prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**15. Penalties for violation of law.**

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

**16. Equal Opportunity Compliance.**

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

**17. Applicable Law.**

In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern, and that venue will lie in the Seventh Judicial District Court in Torrance County. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

**18. Workers Compensation.**

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

**19. Records and Financial Audit.**

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

**20. Disclaimer and Hold Harmless.**

Torrance County shall not be liable to the Contractor, or the Contractor's successors, heirs, administrators, or assigns, for any loss, damage, or injury, whether to Contractor's person or property, occurring in connection with Contractor's performance of

Contractor's duties according to this Agreement. Contractor shall hold the Torrance County harmless from all loss, damage, and injury, including court costs and attorney fees, incurred by Torrance County in connection with the performance by Contractor of Contractor's duties according to this Agreement.

**21. Indemnification.**

The Contractor shall defend, indemnify and hold harmless the County of Torrance 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 County of Torrance and the New Mexico Association of Counties by certified mail.

**22. Invalid Term or Condition.**

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

**23. Enforcement of Agreement.**

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

**24. Authority.**

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

**25. Lobbying.**

No federal appropriated funds can be paid or will be paid, by or on behalf of the CONTRACTOR, or any person for influencing or attempting to influence an officer or employee of any County, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, or the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than federal appropriated

funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any County, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection of this federal contract, grant, loan, or cooperative agreement, the CONTRACTOR shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

**26. Approval of Contractor Personnel.**

Personnel proposed in the Contractor's written proposal to the County are considered material to any work performed under this Agreement. No changes of personnel will be made by the Contractor without prior written consent of the procuring agency of the County. Replacement of any Contractor personnel, if approved, shall be with personnel of equal ability, experience and qualifications. The Contractor will be responsible for any expenses incurred in familiarizing the replacement personnel to insure their being productive to the project immediately upon receiving assignments. Approval of replacement personnel shall not be unreasonably withheld. The procuring agency of the County shall retain the right to request the removal of any of the Contractor's personnel at any time.

**27. Survival.**

The agreement paragraphs titled "Patent, Copyright, Trademark, and Trade Secret Indemnification" and "Indemnification" shall survive the expiration of this agreement. Software licenses, leases, maintenance and any other unexpired agreements that were entered into under the terms and conditions of this agreement shall survive this agreement

**28. Succession.**

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

**29. Force Majeure.**

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

**30. Mediation.**

In the event a dispute arises as to the rights and obligations among the parties hereto, the parties agree to attempt to resolve the dispute through mediation as a condition precedent to seeking legal and equitable remedies. The parties agree to evenly split the costs of any such mediation services. The parties shall mutually agree upon the choice of mediator. In the event the parties have not agreed upon a mediator within twenty (20) days of written notice to the other regarding the dispute, then a list of seven

potential mediators will be obtained from the New Mexico Association of Counties and the parties shall utilize a striking process until a mediator is agreed upon.

**31. Notice to Proceed.**

It is expressly understood that this Agreement is not binding upon the County until it is executed by the Board of County Commissioners after voting on the contract at a public meeting. The Contractor is not to proceed with its obligations under the Agreement until the Contractor has received a fully signed copy of the Agreement.

**32. Attorney's Fees.**

In the event this Agreement results in dispute, mediation, litigation, or settlement between the parties to this Agreement, the prevailing party of such action shall NOT be entitled to an award of attorneys' fees and court costs.

**33. Cooperation.**

All parties hereto will fully cooperate with the other and their respective counsel, accountant, and agents in connection with any steps required to be taken under this Agreement.

**34. Incorporation and Order of Precedence.**

Request for Proposals No. TC-FY22-01 and the contractor's proposal are incorporated by reference into this agreement and are made a part of this agreement. In the event of any conflict among these documents, the following order of precedence shall apply:

1. Any contract amendment(s), in reverse chronological order; then
2. this contract itself; then
3. the Request for Proposals; then
4. the Contractors Best and Final Offer(s), in reverse chronological order; then
5. the contractor's proposal; then
6. the contractor's standard agreement terms and conditions (which may or may not have been submitted as part of the contractor's proposal).

**35. Patent, Copyright, Trademark and Trade Secret Indemnification.**

A. The contractor shall defend, at its own expense, the County of Torrance against any claim that any product or service provided under this agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such

claim. In addition, if any third party obtains a judgment against the County of Torrance based upon the contractor's trade secret infringement relating to any product or service provided under this agreement, the contractor agrees to reimburse the County of Torrance for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the County of Torrance shall:

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

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

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

**36. Professional Liability Insurance.**

Contractor agrees to maintain in full force throughout the duration of the Agreement a professional liability insurance policy with a minimum coverage of \$1,000,000.00 per occurrence/ \$2,000,000.00 aggregate.

**37. Contractor's Payment of Property Taxes.**

Contractor acknowledges that County has established a policy of ensuring that all individuals and businesses that benefit financially from County through contract are current in paying their property tax obligations to mitigate the economic burden otherwise imposed upon County and its taxpayers. Contractor warrants and certifies that

it is presently not delinquent in the payment of its property tax obligations, and that it will not become delinquent during the term of this Contract.

**38. Termination For Failure to Comply with All County Tax Requirements.**

Without limiting the rights and remedies available to County under any other provision of this contract, failure of Contractor to cure a tax delinquency within 10 days of notice shall be grounds upon which County may terminate this Contract.

**39. 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 County: Janice Y. Barela, County Manager // PO Box 48// Estancia, NM  
87016

To the Contractor: [insert name and address].

**IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the Board of County Commissioners below.**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Contractor

Printed Name: \_\_\_\_\_

Address: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Torrance County Manager

Printed Name: Janice Y. Barela

Address: 205 S Ninth Street, Estancia, NM 87016

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Torrance County Purchasing Agent

Printed Name: Noah J. Sedillo

Address: 205 S Ninth Street, Estancia, NM 87016

**BOARD OF COUNTY COMMISSIONERS**

**APPROVED, ADOPTED AND PASSED** on this 8<sup>th</sup> day of September, 2021.

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Ryan Schwebach  
Chairman, District II

---

Kevin McCall  
Commissioner, District I

---

LeRoy Candelaria  
Commissioner, District III

Approved as to form:

---

John M. Butrick  
County Attorney

Attest:

---

Yvonne Otero  
Torrance County Clerk

**Attachment 1**

**SECTION 9. GRIEVANCE PROCEDURES**

**9.1 Conditions or Actions Not Grievable**

The following are not grievable:

- A. Disputes as to whether or not an established County practice or policy is good.
- B. Matters where a method of review is mandated by law.
- C. Matters where the County is without authority to act or does not have the ability to provide a remedy.
- D. Release of temporary employees prior to or at the end of their anticipated employment period.
- E. The dismissal of probationary employees prior to the expiration of their probationary period.
- F. The dismissal of part-time or appointed employees at any point during their employment with the County.
- G. The dismissal of terminable at-will employees at any point during their employment with the County
- H. The layoff of an employee due to reorganization, lack of work, or lack of funds.

**9.2 Informal Grievance Procedure** The purpose of the informal grievance procedure is to provide employees with a fair and equitable process for resolving complaints or problems with general working conditions. Most grievances should be resolved at the lowest possible level and as informally as possible. The following procedures should be the last resort in addressing problems in the work place.

**Step I.** The affected employee shall discuss the problem with the first line supervisor and attempt to work out a solution. No written documentation is required and it is anticipated that most problems will be resolved at this level.

**Step II.** If the problem is not resolved by the supervisor, the employee may file a written complaint with the Department Head, Human Resources Director, or County Manager who shall intervene in an attempt to resolve the problem. The member of management who received the complaint shall meet with the affected employee and shall issue a written finding, which shall serve as the final decision.

**9.3 Pre-Determination Hearings** An employee notified of possible suspension, demotion or dismissal or loss of pay shall be entitled to a Pre-Determination hearing before the appropriate department head or County Manager.

**A. Notice** An employee shall be notified in writing at least 48 hours prior to date and time of determination hearing. The notice shall disclose the reasons for the proposed disciplinary action and all evidence supporting the reasons, and shall state the time, place, and date of the hearing.

**B. Immediate Administrative Leave** An employee may be placed on administrative leave with pay pending the outcome of the pre-determination hearing.

**C. Hearing Procedure** The hearing shall be informal and shall be conducted by the employee's department head or County Manager. The purpose of the hearing is to provide the employee with a reasonable opportunity to address or refute the reasons for the proposed disciplinary action. Employees may respond to the notice of disciplinary action in writing in lieu of appearing at the hearing.

**D. Waiver** The Hearing may be waived by the employee in which case the disciplinary action is effective immediately if a written response in lieu of the hearing, as described above, accompanies the waiver.

**E. Decision** The department head or County Manager shall render a final decision in writing within three (3) business days of the hearing or receipt of the written response to the disciplinary hearing.

**F. Appeal** An employee dissatisfied with the decision may file an appeal through the formal grievance process.

**9.4 Formal Grievance Procedure** If an employee is not satisfied with the decision from the pre-determination hearing, they may file a written request for a formal grievance hearing. The formal grievance procedure applies only to those employees appealing suspension without pay, demotion, or dismissal.

**A.** The final arbiter of suspensions without pay, demotions, and dismissals shall be a Hearing Officer. The Hearing Officer has the authority to set hearings for appeals of suspension without pay, demotion, or dismissal, determine issues of grievability on such appeals, and to render decisions.

**B.** An employee may file a written request for a formal grievance hearing. If an employee chooses to file a written request for a formal grievance hearing, they shall do so within three (3) working days after receipt of a pre-determination hearing final decision.

**C.** The Hearing Officer shall have the power to direct the County Manager to require the presence of county employees at any hearing conducted by the Hearing Officer for the purpose of testifying.

**D.** The Hearing Officer shall not have the authority to amend, modify or arbitrate away any of the provisions of this ordinance or the rules and regulations for employment relations. The Hearing Officer shall confine themselves to the precise issues submitted.

**E.** The Hearing Officer shall be selected as follows:

**1.** The county shall be responsible for issuing a request for proposals (RFP) for hearing officer services. In order to be eligible to serve as a hearing officer, the respondents must have at least three (3) years experience in the area of employment law or human resource management, experience in conducting administrative hearings, and the ability to render and write unbiased and impartial decisions.

**2.** The county shall be responsible for maintaining a list of at least five (5) hearing officers.

**3.** Within ten (10) calendar days of receipt of a timely appeal from an employee or the employee's representative, the employee or employee's representative shall contact the Human Resources Director or designee to select a hearing officer. A hearing officer shall be selected by the parties alternately striking the names off the list of hearing officers until only one name remains. The employee shall exercise the first strike.

**F.** The Hearing Officer Shall:

**1.** Prepare a written decision upholding, reversing or modifying the disciplinary action within thirty (30) calendar days of the conclusion of the hearing. The decision shall contain findings of fact and conclusions of law. The decision shall be served on the parties by certified mail, return receipt requested.

**2.** Have the authority to only award back wages and county contributed benefits to the employee, if applicable. If the hearing officer awards back wages, the employee shall provide the county with a sworn statement of gross earnings and unemployment compensation since the effective date of the disciplinary action. The county shall be able to offset earnings and unemployment compensation received during the period against the back wages awarded. After a written decision is issued, the hearing officer shall retain jurisdiction of the case for the sole purpose of resolving any disputes regarding back wages and county contributed benefits.

**G.** Each party shall bear its own costs. The hearing officer's fees and expenses for a hearing shall be paid:

**1.** Equally by the county and employee if the employee's suspension, demotion or dismissal is modified, but not reversed, by the Hearing Officer;

**2.** By the employee if the Hearing Officer finds in favor of the county; or

**3.** By the County if the hearing officer finds in favor of the employee.

**H.** The Hearing Officer's decision is appealable to District Court pursuant to the provisions of the Uniform Arbitration Act, NMSA 1978 § 44-7A-1 et seq.

**9.5 Complaints Regarding Discrimination** Complaints regarding discrimination based on race, color, religion, gender, gender identity, age, national origin, physical or mental disability, or any other protected status should be referred to the County Manager for prompt investigation and resolution.

**APPENDIX C**  
**COST RESPONSE FORM**

**RFP TC-FY22-01**  
**Grievance Hearing Officers**

State gross receipts and local option taxes (if any) shall not be included in the Total Proposed Cost. Such taxes shall be separately reimbursed by the County.

OFFEROR NAME: \_\_\_\_\_

TOTAL PROPOSED ANNUAL COST \$ \_\_\_\_\_

**APPENDIX D**

**LETTER OF TRANSMITTAL FORM**

**RFP TC-FY22-01  
Grievance Hearing Officers**

**Items #1 to 4 MUST EACH BE RESPONDED TO. Failure to respond to all four items WILL RESULT IN THE DISQUALIFICATION OF THE PROPOSAL!**

1. Identity (Name) and Mailing Address of the submitting organization:

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2. For the person authorized by the organization to contractually obligate the organization:

Name	
Title	
E-mail Address	
Telephone Number	

3. For the person authorized to negotiate the contract on behalf of the organization:

Name	
Title	
E-mail Address	
Telephone Number	

4. For the person to be contacted for clarifications:

Name	
Title	
E-mail Address	
Telephone Number	

5. Declarations:

- I certify that I am authorized to contractually bind my company.
- On behalf of the submitting organization named in item #1, above, I accept the Conditions Governing the Procurement as required in Section II, Paragraph C.1.
- I concur that submission of our proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.
- I acknowledge receipt of any and all amendments to this RFP.
- I certify that my company/entity/organization commits to comply and act in accordance with (1) Federal Executive Orders and New Mexico State Statutes relating to the enforcement of civil rights, (2) Federal Code 5 USCA 7201 et. seq., AntiDiscrimination in Employment; (3) Executive Order No. 11246, Equal Opportunity in Federal Employment; (4) Title 6, Civil Rights Act of 1964; and (5) Requirements of the American with Disabilities Act of 1990 for work performed as a result of this RFP.

\_\_\_\_\_, 2021

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

APPENDIX E

CONFLICT OF INTEREST AFFIDAVIT

STATE OF NEW MEXICO )
) ss.
COUNTY OF TORRANCE )

I, \_\_\_\_\_(name), being first duly sworn upon my oath, depose and state the following:

[ ] Terms of the Conflict of Interest are inapplicable.

[ ] I am a former employee of \_\_\_\_\_(name of Department/Agency), having separated/retired from state employment as of \_\_\_\_\_(date).

[ ] I am a current employee of \_\_\_\_\_(name of Department/Agency), or a legislator with the state, or the family member (spouse, parent, child, sibling by consanguinity or affinity) of a current employee or legislator with the state. Being a current employee or legislator or family member of a current employee or legislator of the state, I hereby certify that I obtained this Agreement pursuant to Sections 10-16-7 or 10-16-9 NMSA 1978, that is, in accordance with the Procurement Code except that this Agreement has NOT been awarded via the sole source or small purchase procurement methods.

The Department/Agency and I have entered into an agreement in the amount of \$ \_\_\_\_\_

Section 10-16-8.A(1) NMSA 1978 of the Governmental Conduct Act does not apply to this Agreement because I neither sought a contract with the Department/Agency, nor engaged in any official act which directly resulted in the formation of the Professional Services Agreement while an employee of the Department/Agency.

To the best of my knowledge, this Agreement was awarded in compliance with all relevant provisions of the New Mexico Procurement Code (13-1-28, et. seq., NMSA 1978).

FURTHER, AFFIANT SAYETH NOT.

\_\_\_\_\_  
NAME

Subscribed and sworn to before me by \_\_\_\_\_(name of former employee) this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

Terms of the Conflict of Interest Affidavit are inapplicable.

My Commission Expires:  
\_\_\_\_\_

## APPENDIX F

### CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

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

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

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

The following definitions apply:

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

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

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

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

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

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

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

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

**DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:**

Contribution Made By: \_\_\_\_\_

Relation to Prospective Contractor: \_\_\_\_\_

Date Contribution(s) Made: \_\_\_\_\_  
\_\_\_\_\_

Amount(s) of Contribution(s) \_\_\_\_\_

Nature of Contribution(s) \_\_\_\_\_  
\_\_\_\_\_

Purpose of Contribution(s) \_\_\_\_\_  
\_\_\_\_\_

(Attach extra pages if necessary)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title (position)

**--OR--**

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title (Position)



# Torrance County

P.O. Box 48  
205 South Ninth Street  
Estancia, New Mexico 87016  
505-544-4700

**Ryan Schwebach,**  
Chair  
District 2

## Attachment to Campaign Contribution Disclosure Form

**Kevin McCall**  
District 1

### Current Torrance County Elected Officials

**LeRoy Candelaria**  
District 3

Commissioner, District 1 – Kevin McCall

Commissioner, District 2 – Ryan Schwebach

**Janice Y. Barela**  
County Manager

Commissioner, District 3 – LeRoy Candelaria

**Vacant**  
Deputy County  
Manager

Assessor – Jesse Lucero

Clerk – Yvonne Otero

**John Butrick**  
County Attorney

Probate Judge – Josie Chavez

**Tracy Sedillo**  
Treasurer

Sheriff – Marty Rivera

**Yvonne Otero**  
Clerk

Treasurer – Tracy Sedillo

**Jesse Lucero**  
Assessor

**Martin Rivera**  
Sheriff

**Josie Chavez**  
Probate Judge

