

NEW MEXICO STATE INVESTMENT OFFICE



REQUEST FOR PROPOSAL FOR AN EXECUTIVE SEARCH FIRM TO CONDUCT A SEARCH FOR THE STATE INVESTMENT OFFICER

RFP #10-0001

ISSUE DATE: DECEMBER 2, 2009

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NOTICE: New Mexico law imposes civil and criminal penalties for procurement violations, including felony penalties for illegal bribes, gratuities and kickbacks.

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REQUEST FOR PROPOSAL

FOR

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I. INTRODUCTION

The New Mexico State Investment Council (“SIC”) is composed of nine (9) members: the Governor, who serves as Chairman; the State Treasurer; the Commissioner of Public Lands; the Secretary of the Department of Finance and Administration; the State Investment Officer; and four public members appointed by the Governor with the advice and consent of the Senate. One of the public members must be the chief financial officer of a state institution of higher education.

The SIC is tasked with prudent oversight of the State’s Permanent Trust Funds (“Permanent Trust Funds”) and all other monies managed by the State Investment Office (“SIO”). The SIC establishes investment policy, monitors investment performance and publicly approves certain investments as mandated by New Mexico statute.

The SIO handles day to day investment functions through the use of both internal and external investment managers. These operations are supervised by the State Investment Officer, who is charged with the responsibility of carrying out the investment policies established by the SIC. The SIO manages the State’s four Permanent Trust Funds: the Land Grant, Severance Tax, Tobacco Settlement, and Water Trust Permanent Funds, as well as the investment dollars of other client agencies, cities, counties and political subdivisions. The SIO began operations in 1959.

As well as traditional investments in publicly-traded fixed income and equities, the SIO today has diversified portfolios that include, for example, alternative investments such as real estate, private equity, hedge fund of funds, and credit & structured debt. All investments are made under the Uniform Prudent Investment Act standard.

In addition, the SIO manages several less-traditional investments in economically targeted sectors established through a specific legislative mandate, including, but not limited to, New Mexico Film Loans and investments in New Mexico-oriented Private Equity Funds. These investments are intended to produce positive returns while also creating jobs and benefitting the state’s economy.

Distributions to the State Budget from the Permanent Trust Funds are based on a 5-year rolling average formula and over the past several years have been greater than \$600 million annually, primarily benefitting New Mexico educational institutions as well as general fund needs.

The SIO fund distributions provide over 10% of the State’s revenue. Historically, investment results have been above median, and the staff of over thirty people is well-qualified, dedicated, and stable.

Additional information can be found on the website <http://www.sic.state.nm.us>.

II. PURPOSE

The purpose of this Request for Proposal (RFP) is to solicit bids from qualified firms to provide Executive Search services for the SIC. It is important to note that the specific objective of this RFP is to obtain such services to assist the SIC Search Committee appointed by the Governor of New Mexico to identify qualified candidates for the position of State Investment Officer for the State of New Mexico, the “chief executive” responsible for the SIO. However, the SIC reserves the right to contract with the successful Offeror beyond the original one year contract for the possibility of up to three one year extensions to provide assistance in potential future executive searches to identify candidates for various other positions required at later dates.

III. STATE INVESTMENT COUNCIL POLICIES

The selected Offeror must adhere to the broad guidelines set forth in the SIC Transparency and Disclosure Policy (the “Policy”), which is found at: [http://www.sic.state.nm.us/PDF%20files/090729F-POL TRANSPARENCY AND DISCLOSURE POLICY.pdf](http://www.sic.state.nm.us/PDF%20files/090729F-POL%20TRANSPARENCY%20AND%20DISCLOSURE%20POLICY.pdf)

Additionally, the selected Offeror must also adhere to any existing applicable SIC policy, or any specific policies developed for the Contractor (collectively, the “Policies”). The Policies may be accessed via the SIC’s website at: <http://www.sic.state.nm.us/policies.htm>

IV. DEFINITIONS

Terms that have specific meaning when used within this document are as follows:

1. “Contractor” shall mean the successful offeror pursuant to this RFP.
2. “Corrupt Practice” shall mean the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official, or the threatening of injury to person, property or reputation, in connection with the procurement process or in contract execution in order to obtain or retain business or other improper advantage in the conduct of business
3. “Evaluation Committee” shall mean the group of individuals, consisting of the SIC Search Committee appointed by the Governor of New Mexico, responsible for evaluating the bids. The Evaluation Committee shall determine which bids are most advantageous to the State and the SIC.
4. “Fraudulent Practice” shall mean a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the State of New Mexico, the SIC, its clients and/or its beneficiaries, and includes collusive practices among tenderers (prior to or after tender submission) designed to establish tender prices at artificial, non-competitive levels and to deprive the State of New Mexico, the SIC, its clients and/or its beneficiaries of the benefits of free and open competition.
5. “Must”, “shall”, “will”, “is required”, “will be” and “are required” refer to items that are mandatory.
6. “Offeror” shall mean a person, corporation or partnership recognized under the laws of the State of New Mexico that is authorized to conduct business within the State.
7. “Policies” shall mean the SIC Policies which can be found at: <http://www.sic.state.nm.us/policies.htm>
8. “Should”, “can”, “may”, “preferably” and “preferred” refer to items that are optional but are desired.
9. “SIC” shall mean the State Investment Council or the “council”. The SIC is the board that supervises the activities of the State Investment Officer.

10. "SIO" shall mean the State Investment Office. The SIO is the administrative arm of the SIC and is responsible for monitoring and managing all investments.

V. POSITION BACKGROUND

1) The position description of the State Investment Officer is detailed beginning at NMSA 1978, Section 6-8-1 *et. seq.* with SIC-specific sections extracted for reference below:

6-8-4. Investment office; state investment officer; terms. (1981)

There is established an "investment office." The chief administrative officer of the office shall be known as the "state investment officer."

The state investment officer shall be appointed by the governor with the advice and consent of the senate. Recommendations as to his appointment shall be made to the governor by the investment council. The state investment officer shall devote his entire time and attention to the duties of his office, shall not engage in any other occupation or profession, nor shall he hold any other public office, appointive or elective. He shall be a person qualified, by training and investment experience, to direct the work of the investment division [office] and shall have had at least five years professional experience as an investment officer. He shall receive a salary to be determined by the investment council, but in no case less than fifty thousand dollars (\$50,000) annually.

6-8-7. Powers and duties of state investment officer; investment policy; investment managers. (2005)

- A. Subject to the limitations, conditions and restrictions contained in policy-making regulations or resolutions adopted by the council and subject to prior authorization by the council, the state investment officer may make purchases, sales, exchanges, investments and reinvestments of the assets of all funds administered under the supervision of the council in accordance with the Uniform Prudent Investor Act [45-7-601 NMSA 1978]. The state investment officer shall see that money invested is at all times handled in the best interests of the state.
- B. The state investment officer shall formulate and recommend to the council for approval investment regulations or resolutions pertaining to the kind or nature of investments and limitations, conditions and restrictions upon the methods, practices or procedures for investment, reinvestment, purchase, sale or exchange transactions that should govern the activities of the investment office.
- C. The council shall meet at least once each month, and as often as exigencies may demand, to consult with the state investment officer concerning the work of the investment office. The council shall have access to all files and records of the investment office and shall require the state investment officer to report on and provide information necessary to the performance of council functions. The council may hire one or more investment management firms to advise the council with respect to the council's overall investment plan for the investment of all funds managed by the investment office and pay reasonable compensation for such advisory services from the assets of the applicable funds, subject to budgeting and appropriation by the legislature. The terms of any such investment management services contract shall incorporate the statutory requirements for investment of funds under the council's jurisdiction.
- D. All funds managed by the state investment officer shall be managed in accordance with the Uniform Prudent Investor Act. With the approval of the council, the state investment officer may employ investment management services to invest the funds and may pay reasonable compensation for investment management services from the assets of the applicable funds, subject to budgeting and appropriation by the legislature.

- E. For funds available for investment for more than one year, the state investment officer may contract with any state agency to provide investment advisory or investment management services, separately or through a pooled investment fund, provided the state agency enters into a joint powers agreement with the council and that state agency pays at least the direct cost of such services. Notwithstanding any statutory provision governing state agency investments, the state investment officer may invest funds available from a state agency pursuant to a joint powers agreement in any type of investment permitted for the land grant permanent funds under the prudent investor rule. In performing investment services for a state agency, the council and the state investment officer are exempt from the New Mexico Securities Act of 1986 [58-13B-1 NMSA 1978]. As used in this subsection, "state agency" means any branch, agency, department, board, instrumentality, institution or political subdivision of the state, the New Mexico finance authority and any tax-exempt private endowment entity whose sole beneficiary is a state agency.
- F. The state investment officer shall provide quarterly performance reports to the legislative finance committee. Annually, the state investment officer shall ratify and provide written investment policies, including any amendments, to the legislative finance committee.

2) Summary of Key Aspects of the State Investment Officer Position

Compensation. The State Investment Officer is a position exempt from the State of New Mexico's regular classified employee system. As such, the compensation is determined within the Executive Exempt Pay Plan. The position of SIC is a Range 70 which carries a pay scale of between \$108,000 and \$457,600 annually.

The Circumstances. The State Investment Officer resigned his position in October 2009. Currently, Mr. Robert Jacksha, who had been serving as the Chief Investment Officer at the New Mexico Educational Retirement Fund, has assumed this position on an interim basis, as appointed by Governor Bill Richardson.

The Opportunity. Once the SIC Search Committee narrows down a finalist(s) for the State Investment Officer position, the recommendation is then made to the SIC, which the finalist(s) shall then be recommended to the Governor. Per NMSA 1978, Section 6-8-4, the State Investment Officer is then appointed by the Governor, and must be confirmed by the New Mexico State Senate. This confirmation procedure by the New Mexico State Senate requires the Governor's State Investment Officer appointee to appear before the New Mexico State Senate Steering and Rules Committee for a question and answer review, and if passed by majority vote, will then be forwarded to the New Mexico State Senate for a final majority vote before the employment is official.

It should also be acknowledged that the current Governor's final term of office expires at the end of 2010, where the term of this position would parallel the Governor's term of office, as his appointee.

The city of Santa Fe is a unique and enchanting environment, full of culture and character which makes it an attractive place to live and work. By major urban standards, it is an affordable city, yet it boasts world-class musical, artistic, and culinary amenities. The city is charming and historic, reflecting a blend of Native American, Hispanic, and Anglo cultures. It is surrounded by recreational opportunities – skiing, hiking, golf, equestrian, fishing, hunting, or just watching the glorious sunsets. Only an hour away is Albuquerque, a city of 800,000 with direct airline service to almost all major U.S. cities. Santa Fe's own airport offers direct airline service to Los Angeles and to Dallas.

VI. SCOPE OF WORK

The selected Offeror, upon execution of the contract and as requested by the SIC Search Committee and subject to New Mexico law and Policies, shall:

1. Meet with and/or make presentations to the SIC Search Committee at the start of the search in order to achieve a clear mutual understanding of the search and shall attend follow up meetings and make presentations as directed by the SIC Search Committee.
2. Advise and assist the SIC Search Committee in the development and implementation of a recruitment plan which shall include the typical functions performed by Executive Search organizations, including but not limited to publicizing the vacancy through advertisements and professional contacts, assembling names of candidates, making contacts, vetting and screening of candidates and determining their interest in the position.
3. Inform candidates for the relevant position from the outset that information concerning the candidates will be available under the New Mexico Inspection of Public Records Act (NMSA 1978 Section 14-2-1 through 14-2-12) and ensure that the candidates consider this in expressing their interest in the position.
4. Review and finalize the position description, qualifications, and performance standards.
5. Develop key competency areas for evaluating candidates.
6. Review and evaluate applications/resumes from all sources, including current employees of the SIO.
7. Develop profiles for all candidates considered as competitive for the position.
8. Evaluate in consultation with the SIC Search Committee the qualifications of acceptable candidates for the relevant position and assist in narrowing the field to the top candidates.
9. Contact prospective candidates to determine their qualifications for, and interest in, the position.
10. Identify and validate, to the extent practical, candidates' current compensation.
11. In coordination with feedback from the SIC Search Committee, conduct in-person preliminary interviews with select candidates.
12. Prepare and submit written comments for each interviewee including, but not limited to, an informal assessment of their suitability and enthusiasm for the position.
13. Recommend finalists for interviews with the SIC Search Committee by preparing a slate including, but not limited to, comparative remarks.
14. Allow SIC Search Committee members the option to review additional candidates at any time during the process.
15. Provide appropriate compensation research and advice, as requested by the SIC Search Committee.
16. Provide resumes and recommend questions to the SIC Search Committee for their interview of candidates.
17. Attend and assist the SIC Search Committee in any interview as requested by the SIC Search Committee.
18. Assist the SIC Search Committee with candidate qualifications, reference, and/or background checks, as directed by the SIC Search Committee.

19. Provide regular as agreed upon progress status reports to the SIC Search Committee, and be accessible for consultation on any aspect of the project during the contract period, as directed by the SIC Search Committee.

20. Handle all acknowledgement letters and other correspondence to applicants, nominators and nominees, and provide copies to the SIC Search Committee.

21. Assist in the development of a formal offer to the selected candidate, as requested by the SIC Search Committee.

22. Provide a guarantee that, if the candidate selected pursuant to the Executive Search performed under the Agreement with the SIO does not remain in the position for a minimum period of six (6) months from date of hire, a new search will be conducted free of charge to the State of New Mexico, to the specifications of the SIC Search Committee.

23. As directed by the SIC Search Committee, assist in notifying the finalist candidates that s/he was not selected.

24. Provide any other service, in connection with the search for the State Investment Officer,, that the SIO Selection Committee or SIC desires.

VII. THE PROCUREMENT PROCESS

The SIC complies with Title II of the Americans with Disabilities Act of 1990. Offerors with disabilities who may need auxiliary aids, services, and/or special modifications to submit a bid or complete the evaluation process should contact, via email, nmsic.itb@state.nm.us no later than **December 14, 2009** to make any necessary arrangements.

This Request for Proposal **may be canceled or any and all bids rejected in whole or in part when it is in the best interests of the SIC at the sole discretion of the SIC and/or the SIC Search Committee.** This RFP shall not be modified in any way except by written amendment. Offerors shall acknowledge receipt of any amendments in writing. In no event shall any entity of the State of New Mexico be responsible for any costs of an Offeror incurred in the preparation, submission, evaluation, or revisions of a bid.

Copies of the responses to all Offerors' written questions will be emailed to the Offeror(s) from the SIO on December 14, 2009.

A. PROPOSED SEQUENCE OF EVENTS (SUBJECT TO CHANGE W/O NOTICE)

<u>ACTION</u>	<u>RESPONSIBILITY</u>	<u>DATE</u>
1. Release of RFP	1. SIC	1. 12/2/09
2. Deadline to Submit Written Questions	2. OFFEROR	2. 12/9/09
3. Responses to Written Questions	3. SIC	3. 12/14/09
4. Offeror Submission of Bids	4. OFFEROR	4. 12/17/09
5. Evaluation of Bids	5. SIC	5. 12/18/09 – 01/01/10
6. Finalist Interviews/Presentations at the option of the SIC Search Committee	6. SIC	6. 12/28/09 – 01/01/10, or earlier
7. Selection of Offeror	7. SIC	7. On or before 01/04/10
8. Contract Execution/Effective Date	8. SIC	8. Expected 01/08/10 or earlier

B. EXPLANATION OF EVENTS

1. Release of the RFP: The RFP will be released on December 2, 2009.
2. Deadline to submit written questions: Offerors may submit questions in writing as to the intent or clarity of this RFP by **8:30 a.m.** Mountain Daylight Time (MDT), December 9, 2009. Offeror(s) must address all written questions to RFP Administrator, e-mail address: nmsic.itb@state.nm.us.
3. Offerors must label the subject line Executive Search Firm RFP #10-0001. Inquiries not submitted via email in accordance with these requirements will not be considered. NO TELEPHONE INQUIRIES OR OTHER NON-WRITTEN INQUIRIES WILL BE ACCEPTED. Telephone calls to verify receipt of written questions only are allowed to (505) 476-9519.
4. Response to written questions: Written responses to all Offerors' written questions emailed to the offeror(s) by **5:00 p.m.** MDT, December 14, 2009.
5. Submission of bids: One (1) copy of the bid shall be delivered by each Offeror **VIA EMAIL**, in **PDF FORMAT**, as described below. **ONLY SUBMISSIONS VIA EMAIL WILL BE ACCEPTED.**

Bids must be signed by an individual with the authority to bind the Offeror organization, and the authority of the individual signing must be stated with the signature. Failure to submit a signed bid may result in rejection of the bid at the sole discretion of the SIC or the SIC Search Committee.

All bid submissions, shall be in PDF format and delivered via email to: nmsic.itb@state.nm.us. The subject line of the email shall be labeled "Executive Search Firm RFP # 10-0001".

DEADLINE FOR RECEIPT OF THE BID IS 4:30 P.M., MDT, DECEMBER 17, 2009. THE DATE ON THE EMAIL HEADER WILL CONTROL. ONLY EMAIL SUBMISSIONS OF BIDS WILL BE ACCEPTED. NO EXCEPTIONS TO THE SUBMISSION DEADLINE WILL BE ALLOWED. FAILURE TO COMPLY WITH ANY OF THE SUBMISSION REQUIREMENTS MAY RESULT IN REJECTION OF THE BID AT THE SOLE DISCRETION OF THE SIC OR THE SIC SEARCH COMMITTEE.

6. Evaluation of the Bids: The SIC Search Committee may initiate discussions with Offerors who submit bids, but bids may be accepted without such discussions. Such discussions shall not be initiated by Offerors. Each bid must include written acknowledgment of the receipt of any and all amendments made to this RFP.
7. Finalists Interviews/Presentations: Finalists Interviews/Presentations may be held at the discretion of the SIC Search Committee. The selected finalists should expect to participate in oral interviews, at the location in New Mexico to be decided by the SIC Search Committee. Offerors selected for final interviews will be expected to make a presentation followed by a question and answer period. The SIC Search Committee will make every effort to notify finalists at least three (3) working days prior to their scheduled interview time.
8. Announcement of Selected Offeror: Upon completion of the evaluation process the SIC may award a contract to one or more selected Offeror(s).
9. Contract Execution/Effective Date: The SIC may execute the contract subject to finalizing all terms and conditions. The contract will take effect upon the execution of the State Investment Officer.

C. GENERAL REQUIREMENTS

To be considered, bids must comply with the requirements and specifications listed below.

SUBMISSION OF A BID CONSTITUTES AN ACCEPTANCE OF THE EVALUATION PROCESS OUTLINED IN SECTION IX, AN ACCEPTANCE OF THE GENERAL REQUIREMENTS OUTLINED IN THIS SECTION VII, AN ACCEPTANCE OF THE TERMS AND CONDITIONS OF THE AGREEMENTS WHICH APPEAR IN THE ATTACHED APPENDICES.

1. RFP Termination: This RFP does not obligate in any manner the State of New Mexico or any of its agencies to the procurement of the services described, implied, or which may be proposed, until confirmed by written contract. Progress toward this end is solely at the discretion of the SIC Search Committee, subject to final terms and conditions, and the procurement may be terminated at any time prior to the signing of the contract.

The SIC Search Committee reserves the right to cancel this RFP at any time, and to reject any and all bids submitted in response to this RFP if the SIC Search Committee determines that such action or actions are in its best interests.

Any contract awarded as result of this RFP may be terminated if sufficient appropriations or authorizations are not available. The SIC Search Committee's decision as to whether sufficient appropriations or authorizations are available will be final.

2. Legal Review: The State of New Mexico expects that all Offerors will agree to be bound by the terms and conditions articulated in this RFP. For this reason, it is strongly recommended that Offerors have the terms and conditions contained herein reviewed by counsel, and that any Offeror concerns be brought to the attention of the SIC Search Committee, all prior to submission.
3. Governing Law: The laws of the State of New Mexico shall govern this procurement.
4. Issuing Office: The SIO, in conjunction with the SIC Search Committee, shall issue this RFP. Questions concerning the RFP may be submitted as specified in Section VII(B). The Contract to be signed will be with the SIO.
5. Bid Costs: Any and all costs incurred by the Offeror in responding to this RFP shall be borne solely by the Offeror, this includes, but is not limited to:
 - a) time and effort upon the part of the Offeror, agent, or affiliate in responding to the RFP and through the evaluation process,
 - b) costs and expenses, including attorney's fees, incurred by the Offeror in responding to the RFP and through the evaluation process, and
 - c) costs and expenses, including costs of reference checks, travel and meals, incurred in response to the SIC Search Committee's requests in evaluating the Offeror's submission.
6. Confidentiality: Any information provided or developed by the Offeror in the performance of this RFP, or in the contractual relationship with the Contractor with the SIO shall be kept confidential and shall not be made available to any individual or organization without the prior written approval of the SIO, unless otherwise required by law.
7. Public Records: The Offeror hereby acknowledges that the SIO is a public agency subject to state laws, including, without limitation, the Inspection of Public Records Act, Section 14-2-1 through 14-2-12 NMSA 1978, which provides generally that all records relating to a public agency's business are open to public inspection and copying unless exempted under the Inspection of Public Records Act,

and the Open Meetings Act, Section 10-15-1 through 10-15-4 NMSA 1978, which provides generally for open meetings for public deliberative bodies. Neither the Offeror nor any related entity shall make any claim against the SIO if it makes available to the public any report, notice or other information the SIC, SIC Search Committee or SIO received from the Offeror or any related entity which was made public by the SIO pursuant to the Inspection of Public Records Act or the Open Meetings Act, as required by law. The SIO acknowledges the Offeror's desire to protect proprietary information from disclosure under certain circumstances when reasonable, and that such information may be protected from disclosure pursuant to public policy exemptions, and confirms its intention to take a similar position with respect to such information, to the extent permitted under the applicable New Mexico law. In the event that a third party seeks disclosure of such information, the SIO will endeavor to contact the Offeror before releasing any information, but in no event will the SIO be under any obligation to either contact such party or refuse to disclose information permitted to be disclosed by New Mexico law. In addition, the Offeror agrees to fully release, waive and hold the SIO harmless from any liability or costs associated with the release of any information.

8. Agreement Terms and Conditions: The contractual agreement between the SIO and the Offeror resulting from this procurement includes all the terms and conditions outlined in the Agreements which appear in the Appendices attached hereto and will incorporate by reference the Proposal Bid submitted by the Offeror. SUBMISSION OF BID BY AN OFFEROR SHALL CONSTITUTE ACCEPTANCE OF THESE TERMS AND CONDITIONS.
9. Offeror Qualifications: The SIC may make such investigations as necessary to determine the ability of the Offeror to qualify under this RFP. The SIC reserves the right to reject the bid of any Offeror who, in the SIC's opinion, is not a responsible Offeror.
10. Fraud, Corruption and Questionable Conduct: The SIC, in respect of the procurement of services:
 - a) will reject a bid if it determines that the Offeror recommended for award has engaged in Corrupt or Fraudulent Practices in competing for the contract in question;
 - b) shall recommend to the SIO to cancel its contract with the Offeror for services if at any time the SIC determines that Corrupt or Fraudulent Practices were engaged in by an Offeror during the procurement or the execution of a contract, without having taken timely and appropriate action satisfactory to the SIC to remedy the situation;
 - c) will declare an Offeror ineligible, either indefinitely or for a stated period of time, if at any time the SIC determines that the Offeror has engaged in Corrupt or Fraudulent Practices in competing for, or in executing, an SIO contract or contract with any other state agency;
 - d) reserves the right, where an Offeror has been found by a judicial process or other official inquiry to have engaged in Corrupt or Fraudulent Practices,
 1. to cancel all or part of the contractual commitments to such Offeror; and
 2. to declare that such Offeror is ineligible, either indefinitely or for a stated period of time; and
 3. will have the right to require that, in contracts financed by the SIO, a provision be included requiring service provider(s) to permit the SIC or its designee to inspect their accounts and records relating to the performance of the contract and to have them audited by auditors appointed by the SIC.
11. Equal Opportunity Employer: The Offeror agrees to abide by all federal and State laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to Equal Employment Opportunity. In accordance with all such laws of the State of New Mexico, the Offeror agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, sexual orientation or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed as a result of this RFP. If the Offeror is found not to be in

compliance with these requirements during the life of the bid or any agreement or contract with the SIC, the Offeror agrees to take appropriate steps to correct these deficiencies. SUBMISSION OF BID BY AN OFFEROR SHALL CONSTITUTE ACCEPTANCE OF THESE TERMS AND CONDITIONS.

12. Americans with Disabilities Act: BY SUBMISSION OF A BID AN OFFEROR CERTIFIES that they comply with the Americans with Disabilities Act of 1990 and the regulations issued thereunder by the federal government, and certifies that programs, services and activities provided to the general public on behalf of the SIC under any contract resulting from this RFP comply with the Americans with Disabilities Act of 1990, 28 CFR, Part 35, Subpart B 35.130.

D. PROTEST PROCEDURE

An Offeror who believes that they have been aggrieved through the procurement process of this RFP shall follow the procedure below. Only those Offerors who respond to this RFP shall have standing to protest.

1. To be valid, a protest must be filed within five (5) business days of the date of the award by the SIC.
2. The protest must be submitted via email to nmsic.itb@state.nm.us. The protest must include the following information to be considered valid:
 - a. The name and contact information (including email address) of the Offeror;
 - b. the grounds relied upon for submitting the protest;
 - c. any supporting evidence; and
 - d. a statement, signed by an authorized agent of the Offeror, certifying that all information included in the protest is true and correct.
3. Commencing upon the date of the email header on the protest, the SIC will have thirty (30) days to respond to the protest or this RFP. The SIC will either deny the protest, request additional information or re-evaluate the award.
4. If the protest is denied, the Offeror will have three (3) business days from the date of the denial to appeal. Appeals shall be made to the SIC, or a person designated by the SIC.
5. The Panel may, at their discretion, hear arguments from the protestor.
6. The Panel, by majority vote, will reach a final decision within twenty (20) days of either: the hearing of arguments of the protestor, or a meeting of the Panel.
7. The decision of the Panel is final and may not be appealed administratively.

VIII. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF COPIES

Offerors shall provide by e-mail one (1) copy of their bid, on or before the closing date and time specified in Section VII for bid submission.

B. COVER LETTER

A cover letter, which shall be considered an integral part of the bid, shall be signed by the responsible individual(s) who is/are authorized to bind the respondent contractually. THE OFFEROR SHALL UTILIZE THE COVER LETTER TEMPLATE, APPENDIX A, FOR COMPLETION OF THIS REQUIREMENT.

This cover letter also contains: a) a statement to the effect that the bid is a firm and irrevocable offer for 120 days; b) the Offeror's name, address and telephone number; c) the Offeror's Federal Employer Identification number; d) a statement expressing the Offeror's willingness to perform the services as described in this RFP; e) a statement as to the availability of staff to perform all services described; f) a statement authorizing the SIC Search Committee to contact references and perform background checks and other investigation as the SIC Search Committee determines necessary to evaluate the bid and, if applicable, and g) identification of any confidential information contained in the RFP.

C. BID FORMAT

All bids must be submitted via email. Completeness, clarity and brevity are stressed. Bids consisting solely of marketing material will not be accepted.

The Offeror's response to this bid must be organized and indexed in the following format.

Tab Element

1. Cover Letter, as described above and as provided as Appendix A.
2. Primary Bid Material:
 - a) The Offeror must describe in sufficient detail how the Scope of Work in Section VI. above will be accomplished with the Offeror's advice and assistance.
3. Disclosures. Offeror must submit required disclosures in accordance with the Transparency and Disclosure Policy and must submit an executed Acknowledgement, Consent and Disclosure Form. See Appendix B & C.

Please use Schedule A (Appendix C) to list the disclosures as required by the Transparency and Disclosure Policy. If necessary, additional documents may be attached, in the form of MS Word or Excel.

4. Supplementary Materials (As desired, labeled as an Exhibit): Offerors may attach other supportive material that they feel may improve the quality of their response. However, voluminous supplementary material may not be reviewed in its entirety at the discretion of the SIC Search Committee.
5. References. A minimum of five (5) references: The Offeror must provide references where the Offeror performed functions or offered services similar to the services solicited by this RFP. In providing this information, each Offeror thereby grants permission to the SIC or SIC Search Committee to contact any or all such references. The minimum information that must be provided for each reference is:
 - Name of organization;
 - Address of organization;
 - Name of contact; and
 - Telephone number of contact and e-mail address, if available.

The evaluation team also reserves the right to, and by submission of a bid the Offeror consents to, contact additional individuals other than those references provided.

ANY BID THAT DOES NOT STRICTLY ADHERE TO THIS FORMAT, AND WHICH DOES NOT ADDRESS EACH SPECIFICATION AND REQUIREMENT WITHIN THE RFP, MAY BE DEEMED NON-RESPONSIVE AND REJECTED AT THE SOLE DISCRETION OF THE SIC AND/OR THE SIC SEARCH COMMITTEE.

D. CONTACT PERSON

Contract Administrator
New Mexico State Investment Office
E-Mail: nmsic.itb@state.nm.us

All questions, accepted only via email, are subject to the deadlines specified under Section VII. above.

IX. BID EVALUATION PROCESS

A. EVALUATION SUMMARY

The SIC Search Committee will decide which bids are most advantageous to the SIC, taking into consideration the evaluation factors set forth below. The following process generally will be followed:

1. All bids will be reviewed for compliance with the minimum mandatory requirements as specified in this RFP, Section VIII(C). Bids that are found not to be in compliance will be rejected.
2. Bids not rejected will then be evaluated on the factors listed in Section IX(B) below. A serious deficiency in any single criteria may be grounds for rejection.
3. The SIC Search Committee shall have the option to contact the Offeror(s) for clarification of any portion of any bid. The SIC Search Committee may also use sources other than the information supplied by the Offeror to verify compliance with requirements of the RFP.
4. At the option of the SIC Search Committee, Finalist Offeror(s) will make presentations before the SIC and selection of the winning Offeror will be decided on the basis of this presentation, the information presented in the response to the RFP, and evaluations by the SIC Search Committee.
5. The selection of the winning Offeror is subject to execution of the contract (Appendix D) in agreement to all terms as outlined in this RFP. If the above does not occur, the SIC Search Committee may select an alternate Offeror for the winning Offeror in the order the finalists finish in the evaluations. The SIC will not be required to initiate another formal RFP process, although a new RFP may be issued if the SIC considers it the most advantageous course of action.

B. EVALUATION FACTORS

The award shall be made to the responsible Offeror whose bid is most advantageous to the SIC, taking into consideration the following weighted evaluation factors. Please note, however, that a serious deficiency in any one criterion may be grounds for rejection.

1. Organizational Background - 10%
 - a) How many years has the firm been providing executive search services?

- b) Describe the ownership structure of the firm, including the relationship of each branch office to other branch offices and to the headquarters office. Proven success and/or notable achievements in fund investment, analysis and advisement searches.
- c) Describe the operational structure of the firm. Identify the locations of the headquarters and branch offices that will be providing services under a contract pursuant to this RFP. How many employees are at the locations where the services related to such contract will be performed?
- d) Describe the firm's usual process for interface with the client and the normal process for flow of information with consulting clients.
- e) Submit information to identify and indicate the firm's financial ability and financial strength and soundness. Optionally, provide an audited financial statement for the most recent fiscal year available.
- f) Please describe any insurance the firm maintains, including the amount of coverage the deductible and co-insurance, if applicable; identify carrier(s).

2. Experience and References -35 %

- a) Describe your firm's experience in sourcing candidates for this type of position and the relevant similar search work your firm has undertaken, as described further in b). Include a record of achievement and recognized expertise in consulting on comparable recent searches for executive-level professionals for large corporations, trust funds, financial institutions, state agencies, or similar institutions.
- b) Describe how many State Investment Officer (or similar) searches have been conducted by the primary person in your Firm who will be responsible for this engagement; describe the outcome of relevant recent (last two years) searches; i.e. were they filled from candidates presented (or ultimately filled internally or from another source). Specifically, identify when exactly each search started and ended and provide, in the references below, the clients for which the search was performed.
- c) Provide information on your firm's industry experience and history of client satisfaction, including the average length of retention of executives who were placed by your firm.
- d) Describe briefly your research capacity. Include information to assist the Evaluation Committee in understanding how recent and in-depth is the executive information for individuals having credentials relevant to this search.
- e) Provide a list of references from current and past clients for which comparable recruiting services have been performed. For each reference listed, include client name, address, and the telephone number and name of a contact person.
- f) Provide for each reference the length of time involved from commencement to placement, the source of the candidate who ultimately filled the position (i.e. from the Search, from within the organization, from another source, etc.)
- g) A minimum of five (5) references shall be provided for the firm and three (3) for each of the key individuals to be assigned to the SIC search team.

3. Methodology -5 %

- a) Describe very briefly the approach or methodology to be used for required services identified in the Scope of Work section of the RFP. Please describe an Action Plan for assisting with the State Investment Officer search process, from commencement through selection.
- b) Please include pertinent information regarding the firm's ability to perform extensive background checks which would address SEC/Licensing authority, censures and allegations, criminal and civil legal filings, employment verification, verification of academic credentials, and article searches. Civil and criminal search should identify litigation brought by or against the candidate including state and federal civil and criminal courts, personal bankruptcy, tax liens and tax cases for the past fifteen years. Indicate capabilities to perform searches for candidates who have lived in another country.

4. Personnel - 25%

- a) Identify the primary contact person, primary service provider and others who will be involved in the search. Provide the qualifications and experience of the key individuals assigned to the SIC search team. Attach the resumes of the key assigned individuals as an exhibit to your firm's proposal.

5. Fees - 25%

- a) Provide a firm, fixed, fully-loaded Cost for the services. Such firm, fixed, fully-loaded Cost shall include all fees and reimbursable expenses that will be incurred by the SIC Search Committee (except candidate travel expenses) and how and when payments would be due. (note that in no event will more than 60% of fees be paid prior to the successful conclusion of the search). The proposal must describe the extent to which the SIC will be obligated to pay the firm's cost if the search is not successfully completed or is terminated. In assessing such charges, the firm should consider that the SIC Search Committee will expect an extensive search of public and private sector entities where prospects would reasonably be expected to be currently employed, and may require assistance in contacting a high number of candidates and conducting preliminary interviews.
- b) If the firm offers video conferencing services, provide associated charges, if any are to be billed above and beyond fees defined in (a). At a minimum, and as applicable, the associated charges shall include: location, originator fee, receiver fee, hourly fees including any difference in fees for first hour versus remaining hours, and cancellation fee. Please note that the SIC Search Committee does not hereby agree to accept any such video conferencing but will make such decisions at the appropriate time.

NEW MEXICO STATE INVESTMENT OFFICE

REQUEST FOR PROPOSAL
FOR EXECUTIVE SEARCH FIRM
TO CONDUCT A SEARCH FOR
THE STATE INVESTMENT OFFICER

COVER LETTER

By submission of this Cover Letter, the Offeror hereby certifies that the following are true and correct statements:

1. NAME OF OFFEROR: _____
2. ADDRESS OF OFFEROR: _____

3. PHONE NUMBER: _____
4. PRIMARY CONTACT: _____
5. EMAIL ADDRESS: _____
6. FEDERAL EMPLOYER ID #: _____
7. This Bid is a firm and irrevocable offer for a period of 120 days, beginning **December 2, 2009**.
8. The Offeror is willing to perform all of the services as outlined in the RFP.
9. The Offeror has the necessary staff available to perform all services as described in the RFP.
10. The Offeror accepts all terms and conditions as outlined in the RFP and in the relevant Agreements. (See Appendix B, Appendix C and Appendix D, respectively.)
11. The Offeror authorizes the SIC Search Committee to contact references and perform background checks and other investigation as the SIC Search Committee determines necessary to evaluate the bid.
12. The Offeror guarantees that, if the candidate selected pursuant to the Executive Search performed under the Agreement with the SIO does not remain in the position for a minimum period of six (6) months from date of hire, a new search will be conducted free of charge to the State of New Mexico, to the specifications of the SIC Search Committee.
13. The Offeror is able to provide all of the services as outlined in the RFP beginning on _____.
14. The following material is considered by the Offeror to be trade secret information: _____
15. The Offeror hereby acknowledges that the SIO is subject to the Inspection of Public Records Act, (NMSA 1978 Ch. 14, Article 2) and the Offeror hereby indemnifies and agrees to hold the SIO harmless for the release of any information, including information deemed confidential commercial information by the Offeror, if the SIO reasonably believes the SIO is permitted to release such information in accordance with law.
16. The Offeror hereby certifies that the undersigned is authorized to contractually bind the Offeror:

BY: _____ TITLE: _____

SIGNATURE: _____ DATE: _____

ACKNOWLEDGMENT, CONSENT AND DISCLOSURE FORM

Reference is hereby made to that certain [] Agreement] (the "Agreement"), proposed to be entered into on or about [], 2009, by and between [], a [] (the "Contractor"), and the New Mexico State Investment Council, an instrumentality of the State of New Mexico ("NMSIC"). In order to induce NMSIC to consider entering into the Agreement, Contractor desires to submit this Acknowledgement, Consent and Disclosure Form, including Schedule A hereto (this "Form"). Specifically, by signing this Form, Contractor hereby expressly represents and covenants as follows:

1. Contractor has (a) carefully reviewed NMSIC's Transparency and Disclosure Policy, which is attached hereto as Exhibit C (the "Policy"), (b) asked representatives of NMSIC any questions Contractor has regarding this Form or the Policy, and (c) had an opportunity to discuss this Form and the Policy with its own legal counsel.
2. Contractor (a) has included in Schedule A hereto all information required to be provided under Section V of the Policy (the "Disclosure"), and (b) represents that, following its reasonable investigation, to the best of Contractor's knowledge, the Disclosure is complete and accurate in all respects as of the date Contractor has submitted this Form to NMSIC.
3. Contractor agrees to be bound by the terms of the Policy that are applicable to it. Contractor further agrees that if, during any time from the date Contractor has submitted this Form to NMSIC until the date two (2) years after the termination of the Agreement, any portion of the Disclosure should become incomplete or inaccurate for any reason, Contractor will provide NMSIC with the updates required to make the Disclosure complete and accurate in all respects within five (5) business days.
4. Contractor acknowledges and agrees that each of (a) the content of the Disclosure, and (b) the representations and covenants contained herein are material factors to NMSIC's consideration of the Agreement. Contractor expressly authorizes NMSIC to rely on the truth and accuracy of the information contained herein in its consideration of the Agreement.
5. Contractor acknowledges and agrees that (a) any breach of the representations or covenants contained herein will cause NMSIC to suffer substantial damages, costs and expenses that, due to their nature, are difficult to calculate and ascertain at this time, and (b) that the liquidated damages formulae specified in Section VIII of the Policy constitute a reasonable basis on which to estimate the damages that will be incurred by NMSIC as a result of such breach by Contractor. Therefore, in the event of any breach of the representations or covenants contained herein, Contractor agrees to pay to NMSIC the amounts specified in Section VIII of the Policy. In connection with the foregoing, Contractor expressly waives any claim that the liquidated damages formulae set forth in the Policy are not reasonable or fail reasonably to estimate actual damages incurred by NMSIC. Such liquidated damages shall apply solely to Contractor's breach of the terms of this Form, and shall not limit NMSIC's recourse against Contractor if Contractor violates any other duty or obligation to NMSIC, including, without limitation, under the Agreement.

AGREED:

ACKNOWLEDGED:

The New Mexico State Investment Council

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

EXHIBIT C

TRANSPARENCY AND DISCLOSURE POLICY

It is the policy of the State Investment Council ("SIC"), Private Equity Investment Advisory Committee ("PEIAC") and State Investment Office ("SIC") to disclose potential or perceived conflicts of interest and to ensure that any and all investments, advisory contracts, or any other contract are entered into by the SIC, PEIAC, or SIC in accordance with its fiduciary responsibilities. Conflicts may arise when an investment manager or other contractor either (i) engages a third party who receives a fee or shares a fee with another party or (ii) shares ownership rights with an individual or entity in connection with the SIC's consummation of the investment or contract.

I. DEFINITIONS

- A. "Third Party Sales Agent" – any individual or entity hired, engaged or retained by an individual or entity seeking to secure or retain an investment or contract from the SIC, SIC or PEIAC who acts as or on behalf of a placement agent, third party marketer, finder, introducing broker, lobbyist, solicitor, consultant or other intermediary to (i) facilitate the investment of money or securing of a contract (ii) to assist in retaining an investment or contract, or (iii) obtain access in any way to the SIC, SIC or PEIAC. This definition is to be construed as broadly as possibly in order to encompass all individuals or entities acting in any manner as a sales agent regardless of duties.
- B. "Third Party Fee" – a Third Party Fee is any fee or any economic benefit that is provided by or at the direction of the recipient of the potential investment or contract to any third party. These fees may be paid by the fund, joint venture, corporation, general partner, member, principal or affiliates thereof. Fees or economic benefit may take the form of a commission based fee, hourly fee, flat fee, retainer, success based fee or ownership stake. Success based fees are payments made contingent upon some future event. For example, a fee may be payable only upon a Fund raising a certain dollar amount or the consummation of an investment or contract.

For the avoidance of doubt, a Third Party Fee will include, but is not limited to, attorneys, accountants, custodians, administrators, auditors, consultants, prime brokers, advisors, or other service providers.

II. PLACEMENT AGENT PROHIBITION

The State Investment Office shall not make any investment when the recipient of the potential investment or contract is represented in any capacity by a Third Party Sales Agent. This ban applies whether or not the Third Party Sales Agent is hired to seek or retain an investment or contract from the SIC/PEIAC/SIC, a group of specific investors that includes the SIC/PEIAC/SIC, or any other investor.

III. GIFT/BENEFIT PROHIBITION

No individual or entity that is a recipient of an investment or contract shall pay or otherwise provide any money, gift or other benefit to any elected or appointed officeholder (directly or indirectly), or any official or employee of the State of New Mexico in connection with the investment or contract.

IV. CAMPAIGN CONTRIBUTION PROHIBITIONS

- A. Investment/contracts.
 - i. During the term of the investment or contract and two years afterward, any and all recipients of investments or contracts, including the firm, individual, principals, agents, employees and family members, are prohibited from making any campaign contribution to any elected or appointed official or any person seeking an elected or appointed position that may have influence over the SIC, SIC or PEIAC.

- ii. During the term of the investment or contract and two years afterward, any and all Third Party Sales Agents (including the firm, individual, principals, agents, employees, and family members), that were engaged with respect to the securing or retention of any investment or contract, are prohibited from making any campaign contribution to any elected or appointed official or any person seeking an elected or appointed position that may have influence over the SIC, SIC or PEIAC.
- B. Prospective looking investment/contracts. The SIC, SIC or PEIAC shall not knowingly award any investment or contract to any firm or individual, that made or caused to be made any campaign contribution to any elected or appointed official or any person seeking an elected or appointed position that may have influence over the SIC, SIC or PEIAC within the preceding two years of the proposed investment or contract.

V. DISCLOSURE

Any individual or entity seeking an investment or contract shall disclose to the SIC staff the following information that shall be deemed public information:

- A. General Disclosure.
 - i. Provide the individual or entity's policy (if any) and describe the practice regarding the offering of compensation in any form in connection with either the solicitation of prospective investments or contracts or the retention of existing investments or contracts.
 - ii. Disclose whether or not the individual or entity (including its principals and affiliates) have any business or financial relationships of any type with the SIC's investment consultant (if any), employees of the SIC or members of the SIC or PEIAC.
 - iii. Disclose any and all campaign contributions by the individual, entity, principals, agents, employees and family members to any elected or appointed official or any person seeking an elected or appointed position that may have influence over the SIC, SIC or PEIAC.
- B. Disclosure of all Third Party Fees. A list of all individuals or entities that are or may be engaged in any way that may or will receive a Third Party Fee in excess of \$50,000 in any twelve month period. For each such listing provide:
 - i. The name of the individual or entity.
 - ii. The names of the principals.
 - iii. The names of the individuals who were the main contacts and negotiated the agreement between the parties.
 - iv. A description of the nature of the services that are to be provided.
 - v. A justification for the engagement, outlining why this relationship was consummated over engagement of a competitor.
 - vi. The dates of hire, engagement, retention and termination.
 - vii. Outline the type and amount of any and all compensation of any kind to be provided or agreed to be provided, including the nature, timing and value.
 - viii. Copy of any and all agreements between the third party and the individual or entity seeking the investment or contract.
 - ix. Copy of any and all agreements between the third party and any other individual or entity that may have or will share in the Third Party Fee – i.e. sub-contractors.
 - x. The names of any current or former SIC consultants, SIC employees or PEIAC/SIC members who suggested the engagement.
 - xi. Other information that may be requested by the SIC, SIC or PEIAC.
- C. Disclosure of Marketing Employees. The marketing of an investment product or other service may be subject to potential conflicts of interest. To minimize and address potential conflicts, the names of any and all employees who in any way are responsible for marketing the product or service shall be disclosed by the potential recipient of the investment or contract. For the avoidance of doubt, the determination of

employees should be construed as broadly as possible and shall include, but not be limited to, full-time, part-time, temporary, exempt and non-exempt employees.

VI. Representation and Warranty/ Continuing Obligation to Disclose.

In any final agreement, any individual or entity seeking an investment or contract shall represent and warrant the information provided pursuant to this Policy is accurate and shall acknowledge the continuing obligation to update any such information within five (5) business days of any change in the information. Such language shall be drafted and acceptable to the SIC staff.

VII. REPORTING TO SIC, PEIAC AND PUBLIC

- A. Ongoing. For investments or other contracts required to be approved by the SIC or PEIAC, disclosure of all of the information outlined in Section V above shall be made two weeks prior to any meeting whereby the approval of such investment or contract is sought. For investments or other contracts requiring only the approval of the State Investment Officer such disclosure shall be made two weeks prior to the expected consummation of any such investment or contract. All such disclosures shall be reviewed for any potential conflicts and shall be posted to the SIC's website in accordance with the two week disclosure deadline. The SIC, PEIAC, SIC staff and the public is encouraged to provide comments with respect to any conflicts via the SIC's website. The SIC staff will provide updated disclosure information to the SIC, PEIAC and public as described herein within fifteen (15) days of receiving updated information from an individual or entity seeking or who has secured an investment or contract.
- B. Monthly/Annually. Each month, the State Investment Officer shall aggregate the disclosures for investments or contracts actually consummated and provide it to the SIC. Annually, the SIC shall provide an aggregated summary of the disclosures for investments or contracts actually consummated and publish the summary in its annual report.

VIII. DAMAGE/PENALTY

Failure by any individual or entity seeking an investment to comply with this Policy or inaccurately supply information shall result in the following:

- A. For investments. Immediate termination of the investment with no obligation to continue funding or pay any management or performance fees AND the payment to the SIC of the greater of either (a) the current market value plus all fees paid or (b) the amount of the investment compounded at a rate of LIBOR plus 5%.
- B. For other contracts. Immediate termination of the contract with no obligation to pay any future fees AND repayment to the SIC of two years fees.
- C. Prohibition. No investment or contract will be granted to the individual or entity for a minimum of twenty-four months after any failure to comply with this Policy.

IX. CRIMINAL PENALTIES

New Mexico law defines a "third-party marketer" as a person who, on behalf of an investment fund manager or other person seeking an investment of public money and under a written or implied agreement, receives a fee, commission or retainer for such services from the person seeking an investment of public money.

By New Mexico law, failure by the recipient of an investment to disclose the identity of any third-party marketer who assisted in obtaining the investment and the amount of any fee, commission or retainer paid to that third-party marketer may subject the recipient of the investment to a fourth degree felony with a fine of not more than twenty thousand dollars (\$20,000).

SCHEDULE A

DISCLOSURE

Required disclosure, as referenced in the Transparency and Disclosure Policy:

II. PLACEMENT AGENT PROHIBITION

Are you represented in any capacity by a Third Party Sales Agent in connection with the potential investment or contract by the SIO, PEIAC or SIC? If “Yes”, please indicate the entity and/or individual(s).

III. GIFT/BENEFIT PROHIBITION

Have you or any other individual at your firm/entity paid or otherwise provided any money, gift or other benefit to any elected or appointed officeholder (directly or indirectly), or any official or employee of the State of New Mexico in connection with the investment or contract? If “Yes”, please explain.

V. DISCLOSURE

A. General Disclosure

- i. Please provide the information requested or indicate if there is no disclosure.
- ii. Please provide the information requested or indicate if there is no disclosure.
- iii. Please provide the information requested or indicate if there is no disclosure.

B. Disclosure of all Third Party Fees

Please list any and all engagements in which the individual or entity seeking this investment or contract has with any unaffiliated parties that may or will result in the payment of \$50,000.00 for the calendar year 2008 and/or 2009.

For each disclosure please provide the following:

- i. The name of the individual or entity.
- ii. The names of the principals.
- iii. The names of the individuals who were the main contacts and negotiated the agreement between the parties.
- iv. A description of the nature of the services that are to be provided.
- v. A justification for the engagement, outlining why this relationship was consummated over engagement of a competitor.
- vi. The dates of hire, engagement, retention and termination.
- vii. Outline the type and amount (within specified ranges to be determined by the SIO staff) of any and all compensation of any kind to be provided or agreed to be provided, including the nature, timing and value.

- a. For calendar year 2008, please specify the exact amount.
 - b. For calendar year 2009, please specify the exact amount, if known, and if not known, give an estimate of the range within \$10,000.00.
- viii. A summary of any and all agreements and material terms between the third party and the individual or entity seeking the investment or contract.
 - a. Materiality in this case means disclosure of terms relevant to the intent of this policy, i.e. conflicts.
- ix. A summary of any and all agreements and material terms between the third party and any other individual or entity that may have or will share in the Third Party Fee – i.e. sub-contractors.
 - a. Materiality in this case means disclosure of terms relevant to the intent of this policy, i.e. conflicts.
- x. The names of any current or former SIO consultants, SIO employees or PEIAC/SIC members who suggested the engagement.
- xi. Indicate that you agree to provide such other information and/or agreements or other documentation that may reasonably be requested by the SIO, SIC or PEIAC.

C. Disclosure of Marketing Employees

Please provide the information requested or indicate if there is no disclosure.

CONFIDENTIAL INFORMATION

The SIO staff may redact or excerpt certain financial information provided in accordance with Section V above prior to posting it on the SIC's website, to the extent the SIO staff determines that doing so is appropriate to protect confidential, confidential commercial information, proprietary information, trade secrets, or some other legitimate business interest, *provided however*, any redaction or excerpt shall be identified on the website.

If you believe any of the information provided pursuant to this disclosure is confidential, proprietary or trade secret and the disclosure of which would be materially harmful, then please indicate which items may be harmful and provide a full justification for why such information is confidential, proprietary or trade secret. The SIO will take this into consideration but any redaction is under the sole discretion of the SIO.

STATE OF NEW MEXICO
STATE INVESTMENT COUNCIL
PROFESSIONAL SERVICES CONTRACT

SIO PSC # FY-337-0100-XXXX

THIS AGREEMENT is made and entered into by and between the State of New Mexico, State Investment Office, (“SIO”), and *NAME OF CONTRATOR*, hereinafter referred to as (“Contractor”), and is effective as of the date set forth below upon which it is executed by the SIO OR Department of Finance and Administration (“DFA”) – *use this if a DFA contract*.

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

I. SCOPE OF WORK:

II. COMPENSATION:

- *HOURLY AMOUNT OR OTHER PAYMENT*
- *INCLUDING OR EXCLUDING TAXES*
- *NOT TO EXCEED AMOUNT*

III. TERM:

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE SIO OR DFA – *use this if a DFA contract*. This Agreement shall terminate on *DATE* unless terminated pursuant to Paragraph IV, Paragraph XVIII, or Paragraph XXV. In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions or renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

IV. 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 SIO’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 SIO is the terminating party, or the Contractor’s sending of the notice of termination, if the Contractor is the terminating party; provide, however, that 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 SIO or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein.

THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE STATE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

- b. Termination Management. Immediately upon receipt by either the SIO 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 SIO; 2) comply with all directives issued by the SIO in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the SIO shall direct for the protection, preservation, retention or transfer of all property titled to the SIO 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 SIO upon termination and shall be submitted to the SIO as soon as practicable.

V. STANDARD OF CARE; INDEMNIFICATION:

The Contractor represents that it is an expert in *SERVICE TYPE* services in the areas of *WHAT WE ARE ASKING THEM TO PERFORM*. Therefore, the Contractor is under a duty to exercise a skill greater than that of an ordinary person and the manner in which the Contractor carries out its duties under this Agreement will be evaluated in light of the Contractor's superior skill in *WHAT WE ARE ASKING THEM TO PERFORM*.

The Contractor shall wholly indemnify, joint and severally, the State of New Mexico against any and all losses, damages, costs, expenses, legal fees, and liability resulting from advice and other services provided under this Agreement that is not made in accordance with the provisions contained herein, advice not made in accordance with applicable law, and advice not made in accordance with the standard of care set forth in this paragraph. 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 SIO and the Risk Management Division of the New Mexico General Services Department by certified mail.

VI. STATE INVESTMENT COUNCIL POLICIES

The selected Contractor must adhere to the broad guidelines as set forth in the New Mexico State Investment Council's Transparency and Disclosure Policy (the "Policy") and must execute the Acknowledgement, Consent and Disclosure Form, which works in conjunction with the Policy. Furthermore, the selected Contractor must adhere to any specific policies developed for the Contractor. The Policy may be accessed via the SIC's website at:
<http://www.sic.state.nm.us/policies.htm>

VII. CONFLICT OF INTEREST; GOVERNMENTAL CONDUCT ACT:

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

VIII. STATUS OF THE CONTRACTOR:

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

IX. 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 prior written approval of the SIO.

X. SUBCONTRACTING:

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

XI. 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 SIO, the Department of Finance and Administration and the State Auditor. The SIO shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the SIO to recover excessive or illegal payments.

XII. RELEASE:

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

XIII. 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 written approval of the SIO.

The Contractor shall wholly and fully indemnify, joint and severally, the State of New Mexico against any and all losses. Damages, costs, expenses, legal fees and liability resulting or arising from the release of information in violation of this paragraph by the Contractor, its officers, employees, subcontractors, affiliates or anyone under the control of the Contractor.

XIV. PRODUCT OF SERVICE; COPYRIGHT:

All materials developed or acquired by the Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to the SIO 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.

XV. AMENDMENT:

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

XVI. MERGER:

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereto, 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 the Agreement.

XVII. APPLICABLE LAW AND JURISDICTION/SERVICE OF PROCESS:

The laws of the State of New Mexico shall govern this Agreement without regard to conflict of laws principles or rules of New Mexico or any other jurisdiction.

Contractor (i) hereby irrevocably submits to the jurisdiction of the state courts of the State of New Mexico and to the jurisdiction of the United States District Court for the District of New Mexico, for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement, (ii) hereby waives, and agrees not to assert, by way of motion, a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that the Agreement or the subject matter hereof may not be enforced in or by such court (provided, however, that the then applicable jurisdiction minimums are not waived), and (iii) hereby waives any offsets or counterclaims in any such action, suit, or proceeding (other than compulsory counterclaims). Contractor hereby consents to service of process by registered mail at the address to which notices are to be given. Contractor agrees that its submission to jurisdiction and its consent to service of process by mail is made for the express benefit of the SIO or the State of New Mexico. Final judgment against Contractor in any such action, suit or proceeding shall be conclusive, and may be enforced in other jurisdictions (a) by suit, action or proceeding on the judgment, a certified or true copy of which shall be conclusive evidence of the fact and of the amount of any liability of Contractor therein described or (b) in any other manner provided by or pursuant to the laws of such other jurisdiction; provided, however, that SIO or its designee may at its option bring suit, or institute other judicial proceedings against Contractor or any of its assets in any state or Federal court of the United States or of any country or place where Contractor or such assets may be found. Contractor further covenants and agrees that so long as this Agreement shall be in effect, it shall maintain a duly appointed agent for the receipt and acceptance on its behalf of service of summons and other legal processes, and upon failure to do so the Clerk of each court to whose jurisdiction it has submitted shall be deemed to be its designated agent upon whom such process may be served on its behalf, and notification by the attorney for plaintiff, complainant or petitioner therein by mail or telecopy to Contractor of the filing of such suit, action or proceeding shall be deemed sufficient notice thereof.

XVIII. WAIVER:

No waiver of any breach of this Agreement or any of the terms or conditions thereof shall be held to be a waiver of any other subsequent breach; nor shall any waiver be valid or alleged or binding unless the same shall be in writing and signed by the party alleged to have granted the waiver.

XIX. APPROPRIATIONS:

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the SIO to the Contractor. The SIO's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the SIO 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.

XX. REPORTS AND MEETINGS:

The Contractor and its principals shall be available on short notice to meet with the SIO and its assigns at such times and with such frequency as the SIO may require to discuss matters covered by this Agreement. Such meetings may take place at the SIO's office or elsewhere as designated by the SIO.

XXI. DISCLOSURE AND MEDIA INQUIRIES:

The SIO will have no liability for making any disclosure it believes in good faith reliance on New Mexico or Federal law it is allowed to make under applicable law. If the SIO receives an inquiry from the media concerning any work performed by the Contractor or their respective affiliates, and if the SIO contacts the Contractor seeking information to respond to such inquiry, the Contractor must respond to the SIO with such information as may reasonably be necessary to respond to the inquiry no later than the next business day.

XXII. EQUAL OPPORTUNITY COMPLIANCE:

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

XXIII. AMERICANS WITH DISABILITIES:

Contractor certifies that he complies with the American with Disabilities Act of 1990 and the regulations issued hereunder by the federal government, and that programs, services and activities provided to the general public on behalf of the SIO under a contract resulting from this Agreement comply with the Americans with Disabilities Act of 1990, 28 CFR, Part 35, Subpart B 35.130.

XXIV. THIRD PARTY FEES:

In connection with this Agreement, the Contractor represents that it has not and will not pay any fee. Furthermore, the Contractor represents that it has not and will not pay or otherwise provide any money, gift or other benefit to any elected or appointed officeholder or any official or employee of the State of New Mexico in connection with this Agreement.

XXV. PUBLIC RECORDS:

The Contractor hereby acknowledges that the State Investment Office is a public agency subject to state laws, including, without limitation, the Inspection of Public Records Act, Section 14-2-1 through 14-2-12 NMSA 1978, which provides generally that all records relating to a public agency's business are open to public inspection and copying unless exempted under the Inspection of Public Records Act, and the Open Meetings Act, Section 10-15-1 through 10-15-4 NMSA 1978, which provides generally for open meetings for public deliberative bodies.

The Contractor agrees not to make any claim against the State if it makes available to the public any report, notice or other information the State received from the Contractor or any related entity which was permitted to be made public by the State pursuant to the Inspection of Public Records Act or the Open Meetings Act. The State acknowledges the Contractor's position that confidential commercial information is protected from disclosure under state public record acts and other similar laws pursuant to certain case law and public policy exemptions, and confirms its intention to take a similar position with respect to such information, to the extent permitted under the applicable New Mexico law. In the event that a third party seeks disclosure of such information, the State will endeavor to contact the Contractor before releasing any information, but in no event will the State be under any obligation to either contact such party or refuse to disclose information permitted to be disclosed by New Mexico law. In addition, the Contractor agrees to fully release, waive and hold the State harmless from any liability or costs associated with the release of any information in accordance with this Section or New Mexico law.

XXVI. FRAUD, CORRUPTION AND QUESTIONABLE CONDUCT:

During the Term of this Agreement, the Contractor agrees to observe the highest standard of ethics. In adherence of this obligation, the SIO defines, for purposes of this provision, the terms set forth below:

- i. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official, or the threatening of injury to person, property or reputation, in connection with the procurement process or in contract execution in order to obtain or retain business or other improper advantage in the conduct of business.
- ii. "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the State of New Mexico, the SIO, its clients and/or its beneficiaries, and includes collusive practices among tenderers (prior to or after tender submission) designed to establish tender prices at artificial, non-competitive levels and to deprive the State of New Mexico, the SIO, its clients and/or its beneficiaries of the benefits of free and open competition.

Contractor understands and agrees that the SIO may, in addition to any other remedy available to it under law:

- i. cancel this Agreement if the SIO at any time determines in its sole discretion that corrupt, questionable or fraudulent practices were engaged in by Contractor or its affiliates during the procurement or the execution of this Agreement; and
- ii. declare a Contractor or its affiliates ineligible, either indefinitely or for a stated period of time, if the SIO at any time determines in its sole discretion that the Contractor or its affiliates have engaged in corrupt, questionable or fraudulent practices in competing for, or in executing this Agreement or any agreement with any other state agency.

XXVII. 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 SIO:

General Counsel
State Investment Office
41 Plaza La Prensa
Santa Fe, NM 87507

To the *CONTRACTOR*:

CONTACT NAME
TITLE
CONTRACTOR NAME
ADDRESS

XXVIII. AUTHORITY:

If the 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.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, parties have executed this Agreement.

New Mexico State Investment Office

By: _____
Bob Jacksha
Interim State Investment Officer

Date:_____

By: _____
Bryan A. Otero
General Counsel

Date:_____

CONTRACTOR NAME

By: _____
CONTACT NAME

Date:_____

(USE THE FOLLOWING ONLY IF CONTRACT NEEDS TO GO THROUGH DFA)

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

Federal Tax ID (EIN): *NUMBER*

By: _____
Taxation and Revenue Department

Date:_____

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

By: _____
DFA Contracts Review Bureau

Date:_____

FEE AGREEMENT BETWEEN THE
NEW MEXICO STATE INVESTMENT OFFICE
AND
NAME OF CONTRACTOR

This Fee Agreement is part of the Professional Services Agreement (SIO PSC #*FY-337-0100-XXXX*) (the “Agreement”) between the New Mexico State, State Investment Office (“SIO”) and *NAME OF CONTRACTOR* (“Contractor”). For the services rendered under this Agreement, the Contractor shall be paid as follows:

[To be completed]

The total compensation due under this Agreement shall not exceed \$3,000,000.00 including gross receipts tax.