

City of Elephant Butte

103 Water Street
P.O. Box 1080
Elephant Butte, NM 87935
Phone: (575) 744-4892 Fax: (575) 744-4493

LEGAL NOTICE

Request for Proposals
Legal Services

Solicitation Number: **19-20-002**

Notice is hereby given
that the
City of Elephant Butte
will receive Request
for proposals (RFP)
For Legal Services Invitation for
Bid # **19-20-002**

Project Description: Contract
Legal Services for the City of
Elephant Butte

**IMPORTANT-PROPOSALS MUST BE
SUBMITTED IN A SEALED
ENVELOPE WITH
THE BID NUMBER AND OPENING
DATE CLEARLY INDICATED ON
THE BOTTOM LEFT HAND
SIDE OF THE FRONT OF THE
ENVELOPE.**

Bids will be received at 103 Water
Street until 4:00PM September 20, 2019
at which time bids will be publicly opened
and read aloud. Any bids received after said
time will be rejected and returned
unopened.

Interested vendors/contractors may obtain
Bid documents at the City of Elephant
Butte, 103 Water St., Elephant Butte, New
Mexico 87935.

All questions pertaining to this project
should be directed to: Rani Bush
575-744-4892 Voice
cityclerk@cityofelephantbutte.com

CITY OF ELEPHANT BUTTE



REQUEST FOR PROPOSALS NO: 19-20-002

SUBMITTAL DEADLINE: September 20, 2019, 4:00 pm
BID OPENING: September 20, 2019, 4:00 pm

Proposals should be delivered as follows:

By mail to:
City of Elephant Butte
ATTN: City Clerk-Treasurer
P.O. Box 1080
City of Elephant Butte, NM 87935

Or by courier or hand delivery to:
City of Elephant Butte
ATTN: City Clerk-Treasurer
103 Water Street
Elephant Butte, NM 87935

*Any inquiries or request regarding this procurement should be submitted to the City Clerk in writing. Offerors may contact **"ONLY"** the City Clerk regarding the procurement. Other City employees do not have the authority to respond on behalf of the City..*

CITY OF ELEPHANT BUTTE



CITY ATTORNEY SERVICES REQUEST FOR PROPOSALS NUMBER: 19-20-002

A. PROJECT DESCRIPTION

The City of Elephant Butte, New Mexico has requirements of as needed basis, per hour for legal services from a professional attorney. The services required by the City will involve interpretation and knowledge of the New Mexico State Statutes, City Ordinances and applicable State and Federal regulations and representation before the local Judicial District and other Courts.

B. PURPOSE OF THIS REQUEST FOR PROPOSALS (RFP)

The City of Elephant Butte is requesting competitive sealed proposals for professional legal services. The successful firm will be required to execute a Professional Services Contract. The Professional Services Contract will incorporate the selected Firm's proposal, scope of services and other pertinent requirements and details.

C. EXPLANATION OF RFP PROCESS

1. Issue of RFP

This RFP is being issued by the City on August 26, 2019. Additional copies of the RFP can be obtained from the City Clerk.

2. Deadline to Submit Additional Questions

Potential offerors may submit additional written questions as to the intent or clarity of this RFP until close of business of September 6, 2019. All written questions must be addressed to the City Clerk.

3. Response to Written Questions/RFP Amendments

Written responses to written questions and any RFP amendments will be distributed on September 13, 2019, to all potential offerors.

4. Submission of Proposals

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE CITY CLERK NO LATER THAN 5:00P.M. MOUNTAIN DAYLIGHT TIME ON SEPTEMBER 20, 2019. Proposals received after this deadline will not be accepted. The date and time will be recorded on each proposal. Proposals must be addressed and delivered to the City Clerk at the address listed. Proposals must be sealed and labeled on the outside of the package to clearly indicate a response to the "Professional

Legal-Service" Request for Proposals. Proposals submitted by facsimile will not be accepted.

A public log will be kept of the names of all offeror organizations that submitted proposals. Pursuant to §13-1-116 NMSA 1978, the contents of any proposal shall not be disclosed to competing offerors prior to contract award.

5. Proposal Evaluation

The evaluation of proposals will be performed by an evaluation committee appointed by the Mayor. The evaluation process will take place on September 23, 2019. During this time, the City Clerk may, at her option, initiate discussion 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.

6. Finalize Contract

The contract will be finalized with the most advantageous offeror by September 25, 2019. In the event that mutually agreeable terms cannot be reached within the time specified, the City reserves the right to finalize a contract with the next most advantageous offeror without undertaking a new procurement process or to cancel the award.

7. Contract Award

After review of the Evaluation Committee Report, the recommendation of the City management, and the signed contract, the City of Elephant Butte Councilors will award the contract on September 27, 2019. This date is subject to change at the discretion of the City Management.

This contract shall be awarded to the offeror whose proposal is most advantageous, taking into consideration the evaluation factors set forth in the 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 and in conformance with §13-1-172 NMSA 1978 and applicable procurement regulations. The fifteen (15)-day protest period for responsive offerors shall begin on the day following the contract award and will end as of 5:00 PM Mountain Daylight Time 15 days after the Contract Award. 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 Village Clerk. The protest must be delivered to the City Clerk.

Protests received after the deadline will not be accepted.

D. GENERAL REQUIREMENTS

This procurement will be conducted in accordance with the State of New Mexico's procurement code regulations 13-1-1 to 13-1-199 NMSA 1978.

1. Acceptance of Conditions Governing the Procurement

Offerors must indicate their acceptance of the Conditions Governing the Procurement section in the letter of transmittal. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in this RFP.

2. Incurring Cost

Any cost incurred by the offeror in preparation, transmittal, presentation of any proposal or material submitted in response to this RFP shall be borne solely by the offeror.

3. Prime Contractor Responsibility

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

4. Sub Contractors

Use of sub Contractors must be clearly explained in the proposal and identified by name. The prime Contractor shall be wholly responsible for the entire performance whether or not sub Contractors are used.

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. The City personnel will not merge, collage, 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 City Clerk.

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 one hundred twenty (120) days after the due date for receipt of proposals or ninety (90) days after receipt of a best and final offer if one is submitted.

8. Disclosure of Proposal Contents

The proposals will be kept confidential until a contract is awarded. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for the material that is proprietary or confidential. The City Clerk 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 inspections of the non-confidential portion of the proposal. Confidential data are normally restricted to confidential financial information concerning the offeror's organization and data that qualify as a trade secret in accordance with the Uniform Trade Secrets Act [§57-3A-1 to 57-3A-7 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 City Clerk 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 continuing prohibition on the disclosure of confidential data.

9. Termination

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

10. Sufficient Appropriation

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

11. Legal Review

The City 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 City Clerk.

12. Governing Law

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

13. Basis for Proposal

Only information supplied by the City in writing through the City Clerk or in this RFP should be used as the basis for the preparation of offeror proposals.

14. Contract Terms and Conditions

The contract between the City of Elephant Butte and a Contractor will follow the format specified by the City and contain the terms and conditions set forth in Appendix A, "Agreement Terms and Conditions." However, the Village 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 and/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 City's terms and conditions, as contained in this Section or in Appendix A, that offeror must propose specific alternative language. The City may or may not accept the alternative language. General references to the offeror's terms and conditions or attempts at complete substitutions are not acceptable to the City and will result in 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.

15. Offeror's Terms and Conditions

Offerors must submit with the proposal a complete set of any additional terms and conditions that they expect to have included in a contract negotiated with the Village.

16. Contract Deviations

Any additional terms and conditions that may be the subject of negotiation will be discussed only between the City and the selected offeror and shall not be deemed an opportunity to amend the offeror's proposal.

17. 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 §13-1-83 and §13-1-85 NMSA 1978.

18. 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 fail to meet the same mandatory requirements and/or doing so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

19. Change in Contractor Representatives

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

20. Notice

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

21. City of Elephant Butte Rights

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

22. Right to Publish

Throughout the duration of this procurement process and contract term, potential offerors, offerors, and Contractors must secure from the City written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement or the subsequent contract. Failure to adhere to this requirement may result in disqualification of the offeror's proposal or termination of the contract.

23. Ownership of Proposals

All documents submitted in response to the RFP shall be available to be picked up by the offerors after the expiration of the protest period with the following exception. Two complete copies of all proposals including the Best and Final Offer, if one was submitted, shall be placed into the procurement file. Those documents will become the property of the City.

24. Confidentiality

Any confidential information provided to, or developed by, the Contractor in the performance of the contract 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 City.

The Contractor(s) agree to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without the procuring City's written permission.

25. 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.

26. 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 City, the version maintained by the City shall govern.

E. SCOPE OF SERVICES

The attorney and/or law firm shall provide the following professional services on an "as needed" basis:

1. Meeting and/or telephone conversations with Mayor, Council Members, or City Clerk for legal consultation;
2. Attendance, as requested, for regular, special, and/or emergency City Council meetings to include but not limited to executive sessions, planning sessions, and conferences.
3. Review of contracts and agreements requests for proposals and bids, job descriptions and similar administrative matters;
4. Research and submission of legal opinions on municipal or other legal matters as requested;
5. Drafting and review of proposed City Ordinances and resolutions;
6. Appearance at court and administrative hearings on behalf of the City and in defense of the City in civil action;
7. Try jury and court cases, prepare criminal complaints where facts warrant, to include: representing the City at all pre-trial motions, preparation for trial, negotiate and enter plea bargains where deemed advisable;
8. Examine, evaluate and provide representation for all appeals to Appellate Courts;
9. Defend in court all litigation where insurance coverage is unavailable. This includes but not limited to: human rights claims, condemnation, zoning and land use regulation matters, permits and administrative actions, administrative citations, code enforcement issues, labor and employment matters;
10. Periodic status reports of legal activities;
11. Submission of monthly itemized billings to City Clerk;
12. Participation in negotiations with other municipalities or governmental bodies, as requested;

F. TECHNICAL CONTENT

The proposal shall include, but is not limited to, the following information:

1. A profile describing the organizational objectives, services available, years of operation and any other information useful in determining the capabilities of the firm.
2. The name and address of the principal attorney who will be responsible for administration of the contract.

3. Resumes of key personnel who will be assigned to actually perform the attorney services.
4. The firm's Equal Employment Opportunity practices.

Proposals received which do not include all of the above listed requirements shall be considered incomplete. The City will not consider incomplete proposals.

G. EVALUTION OF PROPOSALS

Proposals should address each of the following criteria. Each proposal may be awarded points up to the amount listed in parentheses.

1. Experience and knowledge of the New Mexico State Statutes, Administrative Code and other areas of the law including but not limited to (general municipal laws, labor laws/human resource laws, general state and federal laws relating to municipal government, economic development, municipal financing, contract law, franchise law, municipal leases, trial activity, criminal law, knowledge of policing authority issues, municipal litigation). **(35)**
2. Proposed monthly retainer or hourly rate(s) **(30)**
3. Professional qualification and communication skills. Factors to be weighed include total years experience (in particular with New Mexico State, county and municipal clients). **(20)**
4. Past performance Record. The firm's or attorney's past record of performance legal matters relating to government agencies within the past five years. **(10)**
5. Familiarity with the City of Elephant Butte. Key personnel's familiarity with the City of Elephant Butte. **(5)**

H. AWARD AND CONTRACT TYPE

The City Mayor shall evaluate the proposals, taking into consideration the evaluation of factors set forth in this request for proposals.

The Mayor and a selection committee of her choosing shall select and rank in the order of their qualifications attorneys or firms deemed to be the most highly qualified to perform the services described in this request for proposals.

After the initial ranking of the proposals, at the Mayor's sole option, the City may narrow the list of firms for interviews. If a short list is done, then a final ranking will be done. The City may consider the initial ranking as being final.

On recommendation by the Mayor, the City of Elephant Butte Councilors shall make an award and enter into a contract with a specified monthly retainer and/or hourly rate for a term not to exceed four years.

Any amendment to a submitted proposal, made prior to the expiration of the proposal submission deadline, must be acknowledged as having been received by the City.

SEALED PROPOSALS

All proposals submitted to the City must be sealed prior to delivery to the City. Proposals shall not be opened until the time specified in this request for proposals. Sealed proposal envelopes shall be clearly marked on the outside of the envelope.

**Competitive Sealed Proposal No.
City Attorney Services
DO NOT OPEN**

PROPOSAL OPENING

All potential proposers are advised that the City of Elephant Butte will accept proposals until 5:00 PM, September 20, 2019 at the City Administration Offices at which time and place they will be opened for later evaluation. Submit one (1) original and seven (7) copies of the proposal. Proposals submitted after the deadline will not be considered.

OTHER CONSIDERATIONS

The City of Elephant Butte reserves the right to reject any or all proposals, to waive any technicalities, to accept in whole or in part such proposal as may be deemed in the best interest of the City. The City decision to accept or reject a submitted proposal is final and not subject to appeal.

New Mexico criminal statutes impose penalties for illegal bribes, gratuities and kickbacks. By submitting a response to this solicitation, attorneys certify that they are not currently suspended or debarred from conducting business with a State or the Federal Government of the United States of America, or, if currently suspended or debarred, the response discloses and describes the nature and circumstances for such suspension or debarment, and the effective dates of the suspension or debarment.

CAMPAIGN CONTRIBUTION FORM

A CAMPAIGN CONTRIBUTION DISCLOSURE FORM must be submitted by the attorney or firm in accordance with Chapter 81 of the laws of 2006 of the State of New Mexico.

CONTACT INFORMATION

Questions regarding this proposal should be directed to Rani K. Bush, City Clerk-Treasurer at (575) 744-4892 or by e-mail to cityclerk@cityofelephantbutte.com

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person 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 shall void an executed contract or cancel a solicitation or proposed award for a proposed contract 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.

THIS FORM 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. For the purposes of this procurement, "Applicable public officials" are the following elected officials of the City of Elephant Butte:

Mayor Pro Tem Edna Trager
Councilor Travis Atwell
Councilor Gerald Lafont
Councilor Kim Skinner

"Campaign Contribution" means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution,

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

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

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

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

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

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

DISCLOSURE OF CONTRIBUTIONS

Prospective Contractor: -----

Contribution Made By: -----

Relation to Prospective Contractor: _____

Name of Applicable Public Official: -----

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)

APPENDIX A

AGREEMENT TERMS AND CONDITIONS

- 1) **Scope of work:** Said services shall be in accord with, and meet professional standards as set forth in the Scope of Services.
- 2) **Scope of Agreement:** This contract incorporates all of the agreements and understandings between the parties. No prior agreement(s) or understanding(s), verbal or otherwise, shall be valid or enforceable unless embodied in this contract.
- 3) **Compensation:** The City of Elephant Butte shall pay OFFEROR, under this contract, a maximum of \$ ____ (to be determined). The final version of the cost proposed, agreed by both sides, is incorporated into the contract.
- 4) **Term:** THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY COUNCIL. This agreement shall begin on date approved by the City Council and end as approved by City Council. The City may renew the contract on an annual basis or any portion thereof. This agreement including all extensions and renewals shall not exceed four calendar years in duration.
- 5) **Termination:** Either party, with or without cause, may terminate this contract at will. Termination shall be by written notice, which shall be delivered or mailed (certified mail, return receipt) to the other party. If notice is by mail, notice (i.e., the effective date of termination) will be deemed to be effective thirty (30) calendar days from the date of the postmark. If notice is hand-delivered, termination the termination date remains thirty (30) calendar days from the delivery. The Offeror must provide briefing and transitioning to the Legal Service replacement and/or City Clerk. If OFFEROR terminates this contract, notice of termination shall include Offerors final billing statement. In no event shall termination nullify obligations of either party prior to the effective date of termination.
- 6) **Indemnification:** OFFEROR agrees to indemnify and hold harmless the City of Elephant Butte from any and all claims, suits, and causes of action, which may arise from its performance under this contract unless specifically exempted by New Mexico law. OFFEROR further agrees to hold harmless the Village of Williamsburg from all personal claims for any injury or death sustained by OFFEROR, its employees, agents or other representatives while engaged in the performance of this contract.
- 7) **Assignment:** OFFEROR shall not assign or transfer any interest in this contract or attempt to assign, transfer or subcontract any claims for money due under this contract without the prior written approval of the City of Elephant Butte.
- 8) **Subcontracting:** OFFEROR shall not subcontract any interest in this contract or attempt to subcontract any claims for money due under this contract without the prior written approval of the City of Elephant Butte.
- 9) **Confidentiality:** Any information learned, given to, or developed by OFFEROR in the performance of this contract shall be kept confidential and shall not be made available or otherwise released to any individual or organization without the prior written approval of the City of Elephant Butte
- 10) **Conflict of Interest:** OFFEROR warrants that it presently has no interest or conflict of

interest and shall not acquire any interest or conflict of interest, which would conflict with its performance of services under this contract.

- 11) **Conflict Provision:** Should there be any conflict between any terms, condition or understanding between any term or condition contained in this contract and those documents incorporated by reference, the terms and conditions of this contract shall govern.
- 12) **Records-Audit:** CONTRACTOR shall keep, maintain, and make available to the City of Elephant Butte all records, invoices, bills, etc. related to performance of this contract for a period of three (3) years after the date of final payment. If federal grant funds are used to pay under this contract, CONTRACTOR shall retain all records for the period of time under which OMB Circular 102-A shall apply. Said records shall be available for inspection, audit and/or copying by the City of Elephant Butte or its authorized representative or agent, including federal and/or state auditors.
- 13) **Campaign Disclosure:** Offerors must complete, sign and return the Campaign Contribution Disclosure form with their proposal. Applicable public officials of the Executive branch are Mayor and Councilors. Disclosure of contributions to federal campaigns is not included in this reporting requirement.
- 14) **Penalties:** The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA, 1978 imposes civil and criminal penalties for code violations. In addition, the New Mexico Criminal statutes impose felony penalties for illegal bribes gratuities, and kickbacks.
- 15) **Damages:** In the event that OFFEROR defaults on any term or provision of this contract, the City of Elephant Butte retains the sole right to determine whether to declare the contract void able and/or OFFEROR agrees to pay the City of Elephant Butte the reasonable costs, including court fees and attorneys fees and direct and indirect damages, incurred in the enforcement of this contract.
- 16) **Acceptance:** of Conditions Governing the Procurement. Submission of a proposal constitutes acceptance of the Conditions Governing the Procurement and the Evaluation Factors contained in this RFP.
- 17) **Renewal:** City of Elephant Butte shall have the right, but is not obligated, to renew this contract subject to terms agreeable to both the City of Elephant Butte and OFFEROR.
- 18) **Release:** OFFEROR agrees that, upon final payment of the amount due under this contract, OFFEROR releases the City of Elephant Butte from all liabilities, claims and/or obligations whatsoever arising from, or under, this contract
- 19) **Annual Review:** If this contract encompasses more than one fiscal year, this contract is subject to an annual review by the City of Elephant Butte. If any deficiencies are noted during the review process, the OFFEROR shall be given a specified time, as per the Notice to cure provision below, in which to cure said deficiency (ies).
- 20) **Required Liability Insurance:** OFFEROR shall maintain liability insurance in an amount at least equal to the requirements set forth by the New Mexico Tort Claims Act, Sec. 41-4-19, NMSA. 1978 (as amended).
- 21) **Severability:** In the event that a court of competent jurisdiction finds that any term or

provision of this contract is void, void able or otherwise unenforceable, all other terms and provisions shall remain intact and enforceable where not otherwise inconsistent with the Court's findings.

- 22) **Applicable Law:** The Laws of the State of New Mexico and the Ordinances, resolutions, rules and regulations of the City of Elephant Butte shall govern this contract.
- 23) **Professional Service-Work Product:** All work and work product produced under this contract shall be and remain the exclusive property of the City of Elephant Butte and Contractor shall not use, sell, disclose or otherwise make available to anyone (individual, corporation or organization), other than the City of Elephant Butte, any such work or work product or copies thereof. If applicable, the provision of Sec. 13-1-123(8), N.M.S.A. (1978 as amended) shall apply. Further, Contractor shall not apply for, in its name or otherwise, for any copyright, patent or other property right and acknowledges that any such property right created or developed remains the exclusive right of the City of Elephant Butte
- 24) **Status of Contractor:** Contractor acknowledges that it is an independent Contractor and as such neither it, its employees, agents nor representatives shall be considered employees or agents of the City of Elephant Butte, nor shall they be eligible to accrue leave, retirement benefits, insurance benefits, use the City of Elephant Butte vehicles, or any other benefits provided to City of Elephant Butte employees.
- 25) **Non-Discrimination:** Contractor agrees that it, its employee(s) and/or agent(s) shall comply with all federal, state and local laws regarding equal employment opportunities, fair labor standards, and other non-discrimination and equal opportunity compliance laws, regulations and practices.
- 26) **Taxes:** Contractor acknowledges that it and it alone, shall be liable for and shall pay to the New Mexico Taxation & Revenue Department, the applicable gross receipts taxes on all monies paid to it under this contract and that the City of Elephant Butte shall have no liability for payment of such tax. Contractor also acknowledges that it, and it alone, shall be liable to the State and Federal government(s) and/or their agencies for income and self-employment taxes required by law and that the City of Elephant Butte shall have no liability for payment of such taxes or amounts.