

**NEW MEXICO SELF-INSURERS' FUND**

**REQUEST FOR PROPOSALS (RFP)**

**RFP 2021- 8:**

**LEGAL SERVICES**



**RFP Release Date: 04/16/21**

**Proposal Due Date: 05/14/21**

# I. INTRODUCTION

## **PURPOSE:**

The purpose of this Request for Proposal (RFP) is to solicit sealed proposals from attorneys who wish to provide professional legal services to the New Mexico Self-Insurers' Fund (NMSIF) to facilitate NMSIF's statutory duties to defend the members of the Fund in matters pertaining to the insurance coverages provided.

The RFP process ensures that all Professional Services Agreements are Awarded in compliance with all relevant provisions of the New Mexico Procurement Code (13-1-28 *et.seq.* NMSA 1978).

**WHO MAY SUBMIT:** Attorneys and law firms may submit proposals to provide legal services which support defense of:

**(1) Liability Fund**

Requires expertise in one or more of the following areas of law: general tort/public liability pursuant to the Tort Claims Act NMSA § 41-4-1 (*et.seq.*); medical malpractice; law enforcement liability; employment and ethics laws; civil rights; insurance, subrogation and contractual indemnity; construction; property rights and usage; and class action litigation;

**(2) Worker's Compensation Retention Fund**

Requires expertise in the Workers Compensation Administration and appellate courts pursuant to NMSA § 52-1-1 (*et seq.*).

Offerors Awarded Contracts shall work closely with NMSIF staff on development of legal strategies to effectuate early evaluation of claims and practical strategies. Such strategies may facilitate early resolution through motion practice or use of alternative dispute resolution. Selected Offeror(s) shall be deemed "Contractor" or "Contract Counsel". During all litigation stages, Contract Counsel shall keep NMSIF Claims Administrators and NMSIF Supervising Attorneys timely informed about dates of settlement conferences, mediations and arbitrations, as well as hearing dates on all dispositive motions. NMSIF shall review all legal services invoices, and expense submissions to confirm compliance with contractual billing guidelines and other governmental finance requirements.

## **SCOPE OF PROCUREMENT:**

The scope of procurement is to select legal services providers who meet the requirements identified within this RFP. Successful Offeror(s) shall have contracts established with NMSIF. Such contracts will enable NMSIF to assign the most appropriate legal representation for legal matters related to its mission to defend the members of the Fund.

## ***PROCUREMENT MANAGER:***

1. NMSIF has assigned a Procurement Manager who is responsible for the conduct of this procurement whose contact information is listed below:

Name: Kathy Hennessy, Procurement Manager  
Address: New Mexico Municipal Fund  
P.O. Box 846 Santa Fe, NM 87504  
Telephone: (505) 982-5573 ext. 529  
Email: [procurementmanager@nmml.org](mailto:procurementmanager@nmml.org)

2. Any inquiries or requests regarding this procurement should be submitted in writing to the Procurement Manager. Offerors may contact **ONLY** the Procurement Manager regarding this procurement. Other Fund employees or Evaluation Committee members do **not** have the authority to respond on behalf of the NMSIF.
3. **Protests of the solicitation or award must be submitted in writing to the Protest Manager identified herein.** As a Protest Manager has been named in this Request for Proposals, pursuant to §13-1-172, NMSA 1978 and 1.4.1.82 NMAC, **ONLY protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals.** Protests submitted or delivered to the Procurement Manager will **NOT** be considered properly submitted.

## ***PROPOSAL DELIVERY:***

All deliveries of proposals must be submitted via the designated email address and labelled as follows:

**Designated Email :** [procurementmanager@nmml.org](mailto:procurementmanager@nmml.org)  
**Technical Subject Line:** RFP #2021-8 Legal Services - Technical  
**Cost Subject Line:** RFP #2021-8 Legal Services - Cost

## ***PROCUREMENT LIBRARY:***

A procurement library has been established. Offerors are encouraged to review the material contained in the Procurement Library by selecting the link provided in the electronic version of this document through your own internet connection. The library contains information listed below:

Electronic version of RFP, Questions & Answers, RFP Amendments, etc.  
Procurement library location: <https://www.nmml.org>

## ***DEFINITION OF TERMINOLOGY***

“Authorized Representative” or “Representative” 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 a Prospective Contractor.

“Award” or “Awarded” means the final execution of the Contract document.

“Contract” means any agreement for work done to support the Workers’ Compensation Pool, and/or a Contract for work to investigate and defend tort claims and other legal matters done in support of NMSIF.

“Contractor” or “Contract Counsel” means any business having a Contract with the NMSIF.

“Determination” means the written documentation of a decision of a procurement officer including findings of fact required to support a decision. A Determination becomes part of the procurement file to which it pertains.

“Desirable” – the terms "may", "can", "should", "preferably", or "prefers" identify a desirable or discretionary item or factor.

“Evaluation Committee” means a body appointed to perform the evaluation of Offerors’ proposals.

“Evaluation Committee Report” means a report prepared by the Procurement Manager and the Evaluation Committee for Contract Award. It will contain written Determinations resulting from the procurement.

“Finalist” means an Offeror who meets all the Mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

“Fund” means the New Mexico Self-Insurers’ Fund.

“IT” means Information Technology.

“Mandatory” – the terms "must", "shall", "will", "is required", or "are required", identify a Mandatory item or factor. Failure to meet a Mandatory item or factor will result in the rejection of the Offeror’s proposal.

“Minor Irregularities” means anything in the proposal that does not affect the price quality and quantity or any other Mandatory requirement.

“NMSIF” means the New Mexico Self-Insurers’ Fund.

“Offeror” is any person, corporation, or partnership who chooses to submit a proposal.

“Procurement Manager” means any person or designee authorized to enter into or administer contracts and make written Determinations with respect thereto.

“Project” means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The Project terminates once the Project scope is achieved and Project acceptance is given by the Project executive sponsor.

“Prospective Contractor” means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code [Sections [13-1-28](#) through [13-1-199](#) NMSA 1978] or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or small purchase contract.

“Request for Proposals (RFP)” means all documents, including those attached or incorporated by reference, used for soliciting proposals.

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

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

“Staff” means any individual who is a full-time, part-time, or an independently contracted employee with the Offerors company.

## II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule of events, the descriptions of each event, and the conditions governing this procurement.

### SEQUENCE OF EVENTS

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

Action	Responsible Party	Due Dates
1. Issue RFP	NMSIF	04/16/2021
2. Acknowledgement of Receipt Form	Potential Offerors	04/28/2021
3. Deadline to submit Questions	Potential Offerors	04/30/2021
4. Response to Written Questions	Procurement Manager	05/04/2021
<b>5. Submission of Proposal</b>	<b>Potential Offerors</b>	<b>05/14/2021</b>
6.* Proposal Evaluation	Evaluation Committee	05/18/2021 – 05/28/2021
7.* Selection of Finalists	Evaluation Committee	05/28/2021
8.* Best and Final Offers	Finalist Offerors	06/01/2021
9* Oral Presentation(s)	Finalist Offerors	06/02/2021 - 06/04/2021
10.* Finalize Contractual Agreements	NMML/Finalist Offerors	06/07/2021 - 06/18/2021
11.* Contract Awards	Agency/ Finalist Offerors	06/19/2021
12.* Protest Deadline	NMML	06/30/2021

\* Dates indicated in Events 6 through 12 are estimates only, and may be subject to change without necessitating an amendment to the RFP.

## ***EXPLANATION OF EVENTS:***

The following paragraphs describe the activities listed in the Sequence of Events shown above.

### **1. Issuance of RFP**

This RFP is being issued on behalf of the New Mexico Self-Insurers' Fund on April 16, 2021.

### **2. Acknowledgement of Receipt**

Potential Offerors must e-mail the Acknowledgement of Receipt Form (APPENDIX A) to the Procurement Manager at [procurementmanager@nmml.org](mailto:procurementmanager@nmml.org) to have their organization placed on the procurement Distribution List. The form must be returned to the Procurement Manager by 3:00 pm MST/ MDT on the date indicated in the Sequence of Events

The procurement distribution list will be used for the distribution of written responses to questions, and/or any amendments to the RFP. Failure to return the Acknowledgement of Receipt Form does not prohibit potential Offerors from submitting a response to this RFP; however, by not returning the Acknowledgement of Receipt Form, the potential Offeror's representative shall not be included on the distribution list and will be solely responsible for obtaining from the Procurement Library responses to written questions and any amendments to the RFP.

### **3. Deadline to Submit Written Questions**

Potential Offerors may submit written questions to the Procurement Manager as to the intent or clarity of this RFP until 3:00 pm MST/MDT as indicated in the Sequence of Events. All written questions must be addressed to the Procurement Manager as specified. Questions shall be clearly labeled and shall cite the Section(s) in the RFP or other document which form the basis of the question.

#### 4. Response to Written Questions

Written responses to the written questions will be provided via e-mail to all potential Offerors who timely submitted an Acknowledgement of Receipt Form (APPENDIX A) on or before the date indicated in the Sequence of Events

An electronic version of the Questions and Answers will be posted to:  
<https://www.nmml.org>

#### 5. Submission of Proposal

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN **3:00 PM** MST/MDT ON THE DATE INDICATED IN THE SEQUENCE OF EVENTS. **PROPOSALS RECEIVED AFTER THIS DEADLINE WILL NOT BE ACCEPTED.**

***Proposals must be addressed and delivered to the designated email address and labeled as specified in Section I.*** Proposals submitted by facsimile, or other electronic means other than through the designated email address, procurementmanager@nmml.org, will not be accepted.

A log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to §13-1-116, NMSA 1978, the contents of proposals shall not be disclosed to competing potential Offerors during the negotiation process. The negotiation process is deemed to be in effect until the contract is awarded pursuant to this Request for Proposals. Awarded in this context means the final required NMSIF signature on the contract(s) resulting from the procurement has been obtained.

#### 6. Proposal Evaluation

An Evaluation Committee will perform the evaluation of proposals. This process will take place as indicated in the Sequence of Events, depending upon the number of proposals received. During this time, the Procurement Manager may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals; however, proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors.

#### 7. Selection of Finalists

The Evaluation Committee will select and the Procurement Manager will notify the finalist Offerors which it considers most advantageous based upon the technical criteria of the RFP.



## **8. Best and Final Offers**

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers by as per schedule in the Sequence of Events or as soon as possible. Best and final offers may also be clarified and amended at finalist Offeror's oral presentation.

## **9. Oral Presentations**

Finalist Offerors may be required to conduct an oral presentation as per the schedule in the Sequence of Events, or as soon as possible thereafter. Due to COVID-19 restrictions, any oral presentations will be held via Zoom meeting. Whether or not Oral Presentations will be held is at the discretion of the Evaluation Committee and NMSIF.

## **10. Finalize Contractual Agreements**

After approval of the Evaluation Committee Report, any contractual agreement(s) resulting from this RFP will be finalized with the most advantageous Offeror(s), taking into consideration the evaluation factors set forth in this RFP, as per the Sequence of Events, or as soon as possible thereafter. The most advantageous proposal may or may not have received the most points. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror in the timeframe specified, the NMSIF reserves the right to finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process.

## **11. Contract Awards**

Upon receipt of the signed contractual agreement, the Procurement Manager will award as per the Sequence of Events, or as soon as possible thereafter.

## **12. Protest Deadline**

Any protest by an Offeror must be timely submitted and in conformance with §13-1-172, NMSA 1978 and applicable procurement regulations. As a Protest Manager has been named in this Request for Proposals, pursuant to §13-1-172, NMSA 1978 and 1.4.1.82 NMAC, ONLY protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. The 15-calendar day protest period shall begin on the day following the notice of award of contract(s) and will end at 5:00 pm MST/MDT on the 15<sup>th</sup> day. Protests must be written and must include the name and address of the protestor and the request for proposal number. It must also contain a statement of the grounds for protest including appropriate supporting exhibits and it must

specify the ruling requested from the party listed below. The protest must be delivered to:

**Protest Manager c/o New Mexico Self-Insurers' Fund  
P.O. Box 846  
Santa Fe, NM 87504**

**PROTESTS RECEIVED AFTER THE DEADLINE WILL NOT BE ACCEPTED.**

The following paragraphs describe the activities listed in the Sequence Of Events shown above.

**GENERAL REQUIREMENTS:**

**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 Section V of this RFP.

**2. Costs Incurred by Offeror**

Any cost incurred by the potential Offeror in preparation, transmittal, and/or presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror. Any cost incurred by the Offeror for set up and demonstration of the proposed equipment and/or system shall be borne solely by the Offeror.

**3. Contractor Responsibility**

Any contractual agreement that may result from this RFP shall specify that the Contractor is solely responsible for fulfillment of all requirements of the contractual agreement with NMSIF which may derive from this RFP. The NMSIF will only make payments to the prime Contractor who is Awarded a Contract under this procurement.

**4. SubContractor/Consent**

The use of subcontractor is allowed. The Contractor shall be wholly responsible for the entire performance of the contractual agreement whether or not subcontractors are used. Additionally, the Contractor must receive approval, in writing, from the NMSIF, before any subcontractor is used during the term of this agreement.

## 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 NMSIF personnel will not merge, collate, or assemble proposal materials.

## 6. Offerors' 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 addressed to the Procurement Manager and signed by the Offeror or Offeror's duly Authorized Representative.

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 acceptance of prescribed rates for services, will be considered firm for one hundred twenty (120) days after the due date for receipt of proposals.

## 8. Disclosure of Proposal Contents

- a. Proposals will be kept confidential until negotiations and the Award are completed by the Fund. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for material that is clearly marked proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the potential Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements:
- b. Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.
- c. Confidential data is restricted to:
  - i. confidential financial information concerning the Offerors organization;
  - ii. data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, Sections 57-3A-1 to 57-3A-7 NMSA 1978.
  - iii. PLEASE NOTE: 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 Fund shall examine the Offerors 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. No Obligation**

This RFP in no manner obligates the NMSIF to the use of any Offeror's services prior to a valid written Contract Award.

## **10. Termination**

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

## **11. Sufficient Appropriation**

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

## **12. Legal Review**

The Fund requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offerors concerns must be promptly submitted in writing to the attention of the Procurement Manager.

## **13. Governing Law**

This RFP and any agreement with an Offeror which may result from this procurement shall be governed by the laws of the State of New Mexico.

## **14. Basis for Proposal**

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

## **15. Contract Terms and Conditions**

Two different Contracts may be Awarded, a Contract for work done to support the Workers' Compensation Pool, and a Contract for work to investigate and

defend tort claims and other legal matters done in support of NMSIF. Contracts between the Fund and a Contractor will follow the format specified by the Fund and contain the terms and conditions set forth in the Contract template provided in Appendix C. However, the Fund reserves the right to negotiate provisions in addition to those contained in this RFP (Sample Contract) with any Offeror. The contents of this RFP, as revised and/or supplemented, and the successful Offerors proposal will be incorporated into and become part of any resultant Contract.

The Fund will not accept deviations from the Contract terms and conditions as set forth in the RFP Contract template. (Appendix C) Any proposed deviations may cause a proposal to be rejected as nonresponsive when, in the sole judgment of the Fund (and its evaluation team), the proposal appears to be conditioned on the deviation, or correction of what is deemed to be a deficiency, or an unacceptable deviation is proposed which would require a substantial proposal rewrite to correct.

Should an Offeror object to any of the terms and conditions as set forth in the RFP Contract Template (APPENDIX C) the Offeror must propose **specific** alternative language. The Fund may or may not accept the alternative language. General references to the Offerors terms and conditions or attempts at complete substitutions of the Sample Contract are not acceptable to the Fund and will result in disqualification of the Offerors 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.

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

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

## **17. Contract Deviations**

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

## **18. Offeror Qualifications**

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

## **19. Right to Waive Minor Irregularities**

The Evaluation Committee reserves the right to waive Minor Irregularities. The Evaluation Committee also reserves the right to waive Mandatory requirements provided that all of the otherwise responsive proposals failed to meet the same Mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

## **20. Change in Contractor Representatives**

The Fund reserves the right to require a change in Contractor if the assigned Contractor is not, in the opinion of the Fund, adequately meeting the needs of the Fund.

## **21. Notice of Penalties**

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

## **22. Fund Rights**

The Fund, in agreement with the Evaluation Committee, reserves the right to accept all or a portion of a potential Offerors proposal.

## **23. Right to Publish**

Throughout the duration of this procurement process and Contract term, Offerors and Contractors must secure from the Fund written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or Contracts deriving from this procurement. Failure to adhere to this requirement may result in disqualification of the Offerors proposal or removal from the Contract.

## **24. Ownership of Proposals**

All documents submitted in response to the RFP shall become property of the New Mexico Self-Insurers' Fund.

## **25. 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 Fund.

The Contractor agrees to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without the Fund's written permission.

## **26. 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.

## **27. Use of Electronic Versions of this RFP**

This RFP is being made available by electronic means. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the NMSIF, the Offeror acknowledges that the version maintained by the NMSIF shall govern. Please refer to the RFP section located at: <http://www.nmml.org>

## **28. New Mexico Employees Health Coverage**

- a. If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the Contract, Offeror must agree to have in place, and agree to maintain for the term of the Contract, health insurance for those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
- b. Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.
- c. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information <https://www.bewellnm.com/> .

## 29. Campaign Contribution Disclosure Form

Offeror must complete, sign, and return the Campaign Contribution Disclosure Form, APPENDIX B, as a part of their proposal. This requirement applies regardless whether a covered contribution was made or not made for the positions of Governor and Lieutenant Governor or other identified official. Failure to complete and return the signed unaltered form will result in disqualification.

## 30. Disclosure Regarding Responsibility

- a. Any Prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any State Agency or local public body for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company:
- b. is presently debarred, suspended, proposed for debarment, or declared ineligible for Award of contract by any federal entity, State Agency or local public body;
- c. has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:
  - i. the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract;
  - ii. violation of Federal or state antitrust statutes related to the submission of offers; or
  - iii. the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property;
- d. is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure;
- e. has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.
  - i. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
  - ii. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.



- iii. Have within a three-year period preceding this offer, had one or more contracts terminated for default by any federal or State Agency or local public body.)
- f. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.
- g. The Contractor shall provide immediate written notice to the State Purchasing Agent or other party to this Agreement if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.
- h. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the Determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will be grounds for immediate termination of the Agreement.
- i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.
- j. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an Award and is a continuing material representation of the facts during the term of the resulting Agreement. If during the performance of the Contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the State Purchasing Agent or other party to this Agreement. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the State Purchasing Agent or Central Purchasing Officer may terminate the Contract for cause. Still further the State Purchasing Agent or Central Purchasing Officer may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the State Purchasing Agent or Central Purchasing Officer.

### **31. 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 the Agreement without the written consent by the Executive Director of NMSIF. Prior disclosure of conflicts of interest shall be a condition precedent, and failure to disclose shall be grounds for subsequent Contract termination. 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.

Offerors must disclose any past, existing, or potential conflicts of interest in the course of representing governmental entities represented by NMSIF. This disclosure should include both direct and indirect conflicts of interest and also include any positions Offeror has taken in the recent past, or is presently taking, on issues that may be adverse or harmful to the interests of NMSIF or its insureds. To the extent required by the Rules of Professional Responsibility, the disclosure must include any previous litigation against the NMSIF or any of its members in which Offeror or members of Offerors firm have been involved in any capacity. If the NMSIF Executive Director determines that an existing conflict of interest exists, the Offeror shall be required by the Procurement Manager to submit additional documentation limited to a specific description of how the Offeror proposes to overcome the conflict.

### III. RESPONSE FORMAT AND ORGANIZATION

#### **NUMBER OF RESPONSES:**

Offerors shall submit only one proposal in response to this RFP.

#### **NUMBER OF COPIES:**

##### **1. Electronic Responses**

For proposals submitted electronically, the Offeror need only submit one single electronic copy of each portion of its proposal (Technical and Cost) as outlined below. Separate the proposal as described below into separate emails for submission.

Proposals must be submitted in the manner outlined below. Technical and Cost portions of Offerors proposal **must** be submitted in separate emails as indicated below in this section, and **must** be prominently identified as “Technical Proposal,” or “Cost Proposal,” on the front page of each electronic file.

a. **Technical Proposals** – One (1) ELECTRONIC file must be organized in accordance with **Proposal Format**. All information for the Technical Proposal must be combined into a single file/document for electronic submission. The Technical Proposals **SHALL NOT** contain any cost information.

1) **Confidential Information**: If Offeror’s proposal contains confidential information, as defined within this RFP, Offeror **must** submit **two (2) separate ELECTRONIC technical files**:

- One (1) ELECTRONIC version of the requisite proposals identified above as **unredacted** (def. Section I.F.38) versions for evaluation purposes; and
- One (1) **redacted** ELECTRONIC version, in order to facilitate eventual public inspection of the non-confidential version of Offeror’s proposal. Redacted versions **must** be clearly marked as “REDACTED” or “CONFIDENTIAL” on the first page of the electronic file;

b. **Cost Proposals** – One (1) ELECTRONIC file of the proposal containing **ONLY** the Cost Proposal. All information for the cost proposal **must be combined into a single file/document for electronic submission.**

For technical support issues contact Procurement Manager at the following email address: [procurementmanager@nmml.org](mailto:procurementmanager@nmml.org).

The ELECTRONIC submission must be received no later than the time and date indicated in the Sequence of Events, Submission of Proposals and must be delivered in full to the designated email address by the submission deadline.

Any proposal that does not adhere to the requirements of this Section and **Section Proposal Content and Organization** may be deemed non-responsive and rejected on that basis.

## PROPOSAL FORMAT:

Organization of electronic Proposal Content.

Direct reference to pre-prepared or promotional material may be used if referenced and clearly marked. Promotional material must be minimal. The proposal must be organized and indexed in the following format and must contain, at a minimum, all listed items in the sequence indicated.

### **Electronic Proposal: Technical Proposal – DO NOT INCLUDE ANY COST INFORMATION IN THE TECHNICAL PROPOSAL.**

1. Signed Letter of Transmittal
2. Signed Campaign Contribution Form
3. Table of Contents
4. Proposal Summary (Optional)
5. Response to Contract Terms and Conditions
6. Offeror's Additional Terms and Conditions
7. Response to Specifications (**except Cost information which shall be included ONLY in Electronic Proposal (Cost)**
  - a) Organizational Experience
  - b) Organizational References
  - c) Oral Presentation (if applicable)
  - d) Mandatory Specification
  - e) Desirable Specification
  - f) Financial Stability –(Financial information considered confidential, as defined and detailed in this RFP, should be placed in the **Confidential Information** binder, as applicable)
  - g) Performance Surety Bond (if applicable)
  - h) New Mexico Preferences (if applicable)
8. Other Supporting Material (if applicable)

### **Electronic Proposal: Cost Proposal-**

1. Completed Cost Response Form

Within each section of the proposal, Offerors should address the items in the order indicated above. All forms provided in this RFP must be thoroughly completed and included in the appropriate section of the proposal. **Any and all discussion of proposed costs, rates or expenses must occur ONLY in the Cost Proposal.**

A Proposal Summary may be included in Offeror's Technical Proposal to provide the Evaluation Committee with an overview of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the Offeror's proposal. **DO NOT INCLUDE COST INFORMATION IN THE PROPOSAL SUMMARY.**

## IV. SPECIFICATIONS

Offerors must respond by completing the form attached as Appendix F addressing each specification, unless otherwise instructed. The narratives, including required supporting materials will be evaluated for Pass/Fail accordingly.

**Failure to address and satisfy the qualifications below shall result in rejection of the proposal, or, in the instance of a later discovered conflict of interest, shall result in termination of a Contract Awarded by this RFP, if any.**

- a. Law firms submitting offers must have documented experience, skills and knowledge in representing municipal, county or state governmental entities in any of, but not limited to the following areas of law: general tort liability (including highway), medical malpractice, law enforcement liability, employment law, civil rights, insurance, subrogation and contractual indemnity, construction, property rights and usage, class action litigation and worker's compensation.
- b. Law firms submitting offers must identify Principals/Owners/Directors/Partners with at least five (5) years general civil litigation experience.
- d. The proposal must include a completed electronic copy of the form attached as Appendix F. Offerors shall complete Appendix F which includes a KEY PERSONNEL matrix that identifies attorneys with five years or more of relevant legal experience who the offering firm expects to supervise legal work assigned by NMSIF. Appendix F also includes a draft Exhibit A which should be attached to the Professional Services Contract, a form for Offerors to complete with a proposed list of each individual who may provide billable services (including Key Personnel, other billing attorneys, paralegals and law clerks).

Either *curriculum vitae* or narrative detail shall be attached to Appendix F which shall address the following for each proposed biller identified in the Exhibit A to the Professional Services Contract:

1. Area(s) of legal experience: for example, general tort liability (including highway), medical malpractice, law enforcement and corrections liability, employment law, civil rights, insurance, subrogation and contractual indemnity, construction, property rights and usage, class action litigation, and worker's compensation, alleged ethical violations of state law. (Please do not provide extensive or uninformative case lists);
2. A summary of the attorney's general litigation experience;
3. A summary of the attorney's experience in federal and/or state administrative/regulatory proceedings;
4. Date proposed attorneys were licensed as attorney(s) in the State of New Mexico, and other bar admission dates; and

5. A summary of the attorney's educational background, special training, and recognitions.

NMSIF retains the right to request additional information demonstrating the requisite experience.

- e. Offeror must be insured as required pursuant to the terms of set forth in the sample professional services agreements, attached hereto as Appendix C and incorporated herein by reference.
- f. Offerors must disclose any past, existing, or potential conflicts of interest in the course of representing governmental entities or public employees represented by NMSIF. This disclosure should include both direct and indirect conflicts of interest and also include any positions Offeror has taken in the recent past, or is presently taking, on issues that may be adverse or harmful to the interests of NMSIF or its insureds. The disclosure must include any previous litigation against the members of the New Mexico Self-Insurers' Fund in which Offeror or members of Offerors firm have been involved in any capacity. If the NMSIF Executive Director determines that an existing conflict of interest exists, the Offeror shall be required by the Procurement Manager to submit additional documentation limited to a specific description of how the Offeror proposes to overcome the conflict. Such additional documentation shall be submitted to the Procurement Manager **on or before 12:00 p.m. May 28, 2021** before the end of the proposal evaluation process. If a Contract is Awarded to an Offeror pursuant to this RFP, and NMSIF later discovers a conflict of interest that was not previously disclosed as required herein, the Contract may be terminated upon the date of such discovery on the basis of failure to satisfy a condition precedent.
- g. Offerors must provide short explanation of procedures routinely used that are designed to ensure that legal representation is provided in a cost-effective manner. Offerors will be evaluated based on narrative explanation of the firm's process for evaluation of new assignments, innovative suggestions for minimizing costs and description of the firm's capacity to meet the terms of the Billing Guidelines attached to the Sample Contract in Appendix C.
- h. Offerors must agree in the letter of transmittal (Appendix E) that it accepts the following schedule of hourly billing for services rendered. Note that there are distinct rate schedules for Contracts Awarded to defend the Liability Pool and Workers Compensation Pool.

- (1) The following rates for standard litigation/assist/consultation assignments apply to Contracts Awarded to consult and defend the Liability Pool:

Attorneys – Standard Litigation/Assist/Consult Assignments

<b>Years Experience Practicing Law (from date of licensure)</b>	<b>Corresponding Hourly Rate</b>
0 to 1.99 years	\$ 95.00
2 to 4.99 years	\$ 125.00
5 to 9.99 years	\$ 145.00
10+ years	\$175.00

Paralegals – Standard Litigation/Assist/Consult  
Assignments

<b>Qualifications Certifications</b>	<b>Corresponding Hourly Rate</b>
Meet the requirements of Supreme Court Rule 20-102 and are active members of the Paralegal Division of the New Mexico State Bar Association or Certification of having passed the National Legal Assistant’s Certifying Exam administered by the National Association of Legal Assistants	\$ 80.00

Law Clerks – Standard Litigation/Assist/Consult Assignments

<b>Qualifications Certifications</b>	<b>Corresponding Hourly Rate</b>
Law Clerks who are in an ABA accredited law school	\$ 60.00
Law Clerks with Juris Doctorates pending admission to the State Bar of New Mexico.	\$80.00

- (2) NMSIF may request that law firms Awarded Contracts to defend the Liability Pool accept assignments to pursue subrogation interests on claims impacting the Liability Pool. Firms that agree to accept subrogation assignments shall submit monthly progress invoices pursuant to the specialized hourly rate schedule below. After NMSIF agrees to resolve a subrogation matter, *and* collects a recovery, the Contractor shall be paid an additional amount, equal to twenty percent (20%) of the net recovery. (Recovery is defined as gross recovery, net of fees and costs paid by NMSIF.)



Specialized Hourly Rate – Subrogation Assignments

<b>Law Firm Staff</b>	<b>Corresponding Hourly Rate</b>
Paralegals and Law Clerks	\$ 25.00
Attorneys 0 to 4.99 years	\$ 45.00
Attorneys 5 to 9.99 years	\$ 55.00
10+ years	\$ 65.00

- (3) The following rates apply to Contracts Awarded to defend the Worker's Compensation Pool in matters before the Workers Compensation Administration and appellate courts:

Attorneys.

<b>Years Experience Practicing Law (from date of licensure)</b>	<b>Corresponding Hourly Rate</b>
0 to 4.99 years	\$ 125.00
5 to 9.99 years	\$ 145.00
10+ years	\$ 175.00

Paralegals.

<b>Qualifications Certifications</b>	<b>Corresponding Hourly Rate</b>
Meet the requirements of Supreme Court Rule 20-102 and are active members of the Paralegal Division of the New Mexico State Bar Association or Certification of having passed the National Legal Assistant's Certifying Exam administered by the National Association of Legal Assistants	\$ 80.00

Law Clerks

<b>Qualifications Certifications</b>	<b>Corresponding Hourly Rate</b>
Law Clerks who are in an ABA accredited law school	\$ 60.00
Law Clerks with Juris Doctorates pending admission to the State Bar of New Mexico.	\$80.00

- i. Offerors must provisionally complete and submit the NMSIF Certification form attached at Appendix I. Completion of the NMSIF Certification form requires Offeror to analyze its business association and determine whether any individual who has a substantial ownership interest (defined as greater than 20%) is required to disclose status as a current or former state employee or legislator or the family member of a local public body employee. Any individual required to disclose status as current or former local public body employee or the family member of a current local public body employee must be prepared to submit an affidavit at the time the Contract is executed. A sample affidavit is included in Appendix I and a final form will be submitted for execution at the time of Contract Award. Timely completion and return of the Affidavit will be critical in order to allow for required Memos from the Attorney General and PERA.

**Failure to address and satisfy these SPECIFICATIONS shall result in rejection of the proposal.**

## ***BUSINESS SPECIFICATIONS***

### **1. Resident Business or Resident Veterans Preference**

To ensure adequate consideration and application of 13-1-21 NMSA (as amended), Offerors must include a copy of their preference certificate in this section. In addition, for resident Veterans Preference, the attached certification Form (APPENDIX G) must accompany any Offer and any business wishing to receive the preference must complete and sign the form.

### **2. Letter of Transmittal Form**

The Offerors proposal **must** be accompanied by the Letter of Transmittal Form located in APPENDIX E. The form **must** be completed and must be signed by the person authorized to obligate the company.

### **3. Campaign Contribution Disclosure Form**

The Offeror must complete an unaltered Campaign Contribution Disclosure Form and submit a signed copy with the Offerors proposal. This must be accomplished whether or not an applicable contribution has been made. (See APPENDIX B)

#### **4. Employee Health Coverage Form**

The Offeror must agree with the terms as indicated in APPENDIX D. The unaltered form must be completed, signed by the person authorized to obligate the Offerors firm and submitted with Offerors proposal.

## V. EVALUATION

### ***EVALUATION SUMMARY:***

The following is a summary of evaluation factors. These weighted factors will be used in the evaluation of individual potential Offeror proposals by sub-category.

<b>Factors</b>	<b>Pass/Fail</b>
A. Specifications	Pass/Fail
B. Business Specifications	
Resident Business or Resident Veteran's Preference	Pass/Fail
Letter Of Transmittal	Pass/Fail
Campaign Contribution Disclosure Form	Pass/Fail
Employee Health Coverage Form	Pass/Fail

### ***EVALUATION PROCESS:***

1. All Offeror proposals will be reviewed for compliance with the requirements and specifications stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the Offeror for clarification of the response.
3. The Evaluation Committee may use other sources of information to perform the evaluation.
4. Offerors whose proposals are most advantageous to the State will be recommended for Award. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection.

## **APPENDIX A**

### **ACKNOWLEDGEMENT OF RECEIPT FORM**

# APPENDIX A

## REQUEST FOR PROPOSAL

### 2021-8: Legal Services ACKNOWLEDGEMENT OF RECEIPT FORM

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that s/he has received a complete copy, beginning with the title page and ending with APPENDIX M.

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than the date specified in the Sequence of Events. Only potential Offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all written questions and the written responses to those questions as well as RFP amendments, if any are issued.

Firm **does/does not** (circle one)  
intend to respond to this Request for Proposal.

Firm:			
Represented by:			
Title:		Phone#:	
Email:		Fax #:	
Address:			
City:		State:	
		Zip:	
Signature:			Date:

This name and address will be used for all correspondence related to the RFP:

Kathy Hennessy, Procurement Manager  
procurementmanager@nmml.org

## **APPENDIX B**

### **CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

## CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, a Prospective Contractor subject to this section shall disclose all Campaign Contributions given by the Prospective Contractor or a family member or Representative of the Prospective Contractor to an Applicable Public Official of the state or a local public body during the two years prior to the date on which a proposal is submitted or, in the case of a sole source or small purchase contract, the two years prior to the date on which the Prospective Contractor signs the contract, if the aggregate total of contributions given by the Prospective Contractor or a family member or Representative of a Prospective Contractor to the Applicable Public Official exceeds two hundred fifty dollars (\$250) over the two-year period. A Prospective Contractor submitting a disclosure statement pursuant to this section who has not contributed to an Applicable Public Official, whose family members have not contributed to an Applicable Public Official or whose Representatives have not contributed to an Applicable Public Official shall make a statement that no contribution was made.

A Prospective Contractor or a family member or Representative of the Prospective Contractor shall not give 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 during the pendency of negotiations for a sole source or small purchase contract.

Furthermore, a solicitation or proposed Award for a proposed Contract may be canceled pursuant to Section [13-1-181](#) NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section [13-1-182](#) NMSA 1978 if a Prospective Contractor fails to submit a fully completed disclosure statement pursuant to this section; or a Prospective Contractor or family member or 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.

The State Agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every Applicable Public Official, if any, for which disclosure is required by a Prospective Contractor.

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

The following definitions apply:

**“Applicable Public Official”** means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to Award or influence the Award of the contract for which the Prospective Contractor is submitting a competitive



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

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

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

**“Pendency of the Procurement Process”** means the time period commencing with the public notice of the request for proposals and ending with the Award of the contract or the cancellation of the request for proposals.

**“Prospective Contractor”** means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code [Sections [13-1-28](#) through [13-1-199](#) NMSA 1978] or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or 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.

## CAMPAIGN CONTRIBUTION DISCLOSURE FORM

<b>Name(s) of Applicable Public Official(s) if any:</b>	
---	--

### DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By:	
Relation to Prospective Contractor:	
Date Contribution(s) Made:	
Amount(s) of Contribution(s)	
Nature of Contribution(s)	
Purpose of Contribution(s)	

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)			

*Attach extra pages if necessary.*

## **APPENDIX C**

### ***PROFESSIONAL SERVICES CONTRACTS***

# APPENDIX C

## SAMPLE CONTRACT

NEW MEXICO SELF-INSURERS' FUND  
AND  
[XXXXXX]  
REGARDING [XXXXXX]

Whereas, the New Mexico Self-Insurers' Fund ("Fund") has the authority to employ Contractors and other advisors to assist it in accomplishing its business; and

Whereas, the Fund has historically administered [XXXXXX]; and

Whereas, [XXXXXX] ("Contractor") desires to enter into an agreement with the Fund to provide [XXXXXX];

NOW THEREFORE, the Fund and Contractor enter into this agreement [XXXXXX].

1. Scope of Work. The Contractor shall perform the following professional services for the Fund: [XXXXXX]
2. Compensation. The Contractor will be paid the sum of [XXXXXX], per annum in bi-weekly installments plus applicable gross receipts tax. The Fund shall also reimburse Contractor for reasonable allowable expenses at cost, not to exceed [XXXXXX]. The Fund shall reimburse Contractor's allowable expenses as follows:
  - a. Direct reimbursement for gasoline or fuel costs associated with services rendered pursuant to this agreement. Reimbursement for public transportation, when necessary, will equal actual cost of fares. First class accommodations will be utilized only when a lesser rate is not available.
  - b. The Fund shall reimburse Contractor for the reasonable cost of lodging, meals, and entertainment costs incurred when traveling on behalf of the Fund.
  - c. Contractor will be reimbursed for travel on a monthly basis. Reimbursement for travel-related expenses shall not exceed the sum of [XXXXXX] per quarter.

The Fund will pay all sums due upon receipt of properly-documented invoices from the Contractor. All invoices shall be paid within fifteen (15) days of submission to the Fund.

3. Term. The term of this Agreement shall begin [XXXXXX] and terminate on [XXXXXX], unless terminated sooner pursuant to the provisions of Paragraph 5.
4. Subcontractor. The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Fund. All fees and costs of any approved subcontractor shall be billed by the Subcontractor directly to the Contractor and paid by the Contractor to the Subcontractor.
5. Early 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. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination.
6. Status of Contractor. The Contractor and any subcontractors are independent contractors performing professional services for the Fund and are not employees of the Fund. The Contractor and any subcontractors shall not accrue leave, retirement, insurance, bonding, use of Fund vehicles, or any other benefits afforded to employees of the Fund by virtue of this Agreement.
7. Assignment. Except as may be otherwise provided in Paragraph 4, the Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Fund.
8. Records and Audit. The Contractor shall maintain for three (3) years from the expiration or termination of this Agreement detailed time records which indicate the date, time, and nature of services rendered. The records shall be subject to inspection by the Fund, its executive committee or board of directors, and any auditor retained by the Fund. The Fund

shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Fund to recover excessive or illegal payments.

9. Hold Harmless and Indemnity Agreement. Contractor shall defend, indemnify, and hold harmless the Fund, its respective officers, directors, employees, agents, successors, and permitted assigns from and against all losses, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorney's fees, the cost of enforcing any right to indemnification hereunder, arising out of or resulting from any third-party claim against the Fund, its officers, directors, employees, agents, successors, and permitted assigns, including but not limited to any claim resulting from Contractor's breach and/or any breach by an agent or vendor of Contractor's confidentiality obligations set forth herein. Contractor shall hold harmless and indemnify the Fund, its officers, employees, agents, and attorneys from all claims, liabilities, obligations, losses and the like, asserted by any third parties arising from or caused by the Contractor's acts, negligence, misrepresentation, fraud, or any other acts of professional malpractice. This indemnity and hold harmless agreement shall include reimbursement of all attorney fees, costs, and expenses incurred by the Fund, its officer, employees, agents, and attorneys in defending any such action.
10. Indemnification Procedure. The Fund shall promptly notify the Contractor in writing of any action for which the Fund believes it is entitled to be indemnified. The Fund ("Indemnitee") shall cooperate with the Contractor ("Indemnitor") at the Indemnitor's sole cost and expense. The Indemnitor shall immediately take control of the defense and investigation of such action and shall employ counsel of its choice to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee's failure to perform any obligations under this paragraph will not relieve the Indemnitor of its obligations except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such

failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its choosing.

11. Release. Upon final payment for the amount due under this Agreement, the Contractor shall release the Fund, its officers, employees, agents, and attorneys from all liabilities, claims, and obligations for amounts due under this Agreement, unless the Contractor has express written authority to do otherwise, and then only within the strict limits of that authority.
12. Confidentiality. Any information obtained by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization without the prior written approval of the Fund. The following information is excluded from this paragraph: a) information which is already in the public domain, or which enters the public domain, or which enters the public domain under any circumstances other than a wrongful act by the Contractor; b) information received by the Contractor from any third party without similar restrictions and without a breach of the agreement; or c) information lawfully required to be disclosed by any governmental agency or applicable law.
13. Insurance. Contractor shall, at Contractor's expense, procure an errors and omissions insurance policy naming the Fund as an additional insured in the amount of not less than [XXXXXX].
14. Conflict of Interest. The Contractor warrants that it has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement.
15. Amendment. This Agreement shall not be altered, changed, or amended except by an instrument in writing executed by the parties.
16. Merger. This Agreement shall incorporate all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof. No prior agreement or

understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless contained in the Agreement.

17. Applicable Law. This Agreement shall be governed by the laws of the State of New Mexico and any applicable federal laws.
18. Waiver. No waiver of any breach of this Agreement or any of the terms or conditions hereof shall be held to be a waiver of any other or subsequent breach, nor shall any waiver be valid unless the same shall be in writing and signed by the party alleged to have granted the waiver.
19. Work Product. All records, work product, documentation, or other materials prepared by the Contractor pursuant to this contract of any kind relating to the Fund shall be the property of the Fund and will be available for inspection or audit by the Fund or its representatives at any time during the contract period and upon its termination, at which time records may be turned over to the Fund or retained by Contractor, as the Fund requests.
20. 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 and rules and regulations, and executive orders of the Governor of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, color, national origin, sex, sexual preference, age, ancestry, disability, 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 by the Contractor under this Agreement. If the Contractor is found to be in violation of these requirements during the term of this Agreement, the Contractor agrees to take appropriate steps to correct the deficiencies.



21. Appropriations. Payment of any amounts under this Agreement is contingent upon sufficient appropriations and authorizations being otherwise made therefor by the board of directors of the Fund. If, for any reason, sufficient appropriations and authorizations are not made, this Agreement shall terminate upon written notice being given to the Contractor by the Fund. Such termination shall not result in any claim for damages by the Contractor. The Fund's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

22. Notice. Notice given pursuant to this contract shall be provided to the following persons at the following addresses:

a. To the Fund:

AJ Forte  
New Mexico Self-Insurers' Fund  
1229 Paseo de Peralta  
Santa Fe, New Mexico 87501

b. To the Contractor:

[XXXXXXX]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

NEW MEXICO SELF-INSURERS' FUND

[XXXXXXX]

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**The Agreement included in this Appendix C represents the contract/price agreement the NMSIF intends to use to make an award. The NMSIF reserves the right to modify the Agreement prior to, or during, the award process, as necessary.**

## **Exhibit B**

### **Billing Guidelines**

#### **I. General Principles**

- A. **Origination of Legal Work.** All legal work performed under the contract must originate with NMSIF. In the event any public entity or public employee makes direct contact with the Contractor to initiate defense of a matter, the Contractor shall immediately contact NMSIF for instructions. Public entities or public employees shall be directed to contact NMSIF to request a claim assignment according to normal NMSIF claim procedures. Legal work performed on behalf of a public entity in the absence of notice to or approval from NMSIF will not be compensated.
- B. **Conflicts of Interest** Since the New Mexico Self-Insurers' Fund has a broad array of interests, Contractors shall be vigilant in application of the Rules of Professional Responsibility and have processes in place to identify actual, perceived, or potential conflicts of interest posed by its representation of the local public body as assigned by the Fund, its entities and employees.

#### **Firms must comply with the following directives:**

A conflict of interest check must be performed by the Contractor on each matter assigned to it. NMSIF requires a prompt investigation and resolution of all potential conflicts, including any issue conflicts that could compromise the Fund's position. **A written email acknowledging the assignment and confirming that a conflict of interest check has been performed must be sent to NMSIF for every claim assigned to the Contractor, and must be completed before work on a claim begins**

Conflicts of interest must be disclosed to NMSIF immediately upon discovery of the conflict, and waived, in writing prior to beginning work on the matter.

The Contractor is further required to disclose any changes to the conflict of interest status during the pendency of representation, and must inform NMSIF of any activity which might be actual, perceived, or a potential conflict of interest.

- C. **Ethical Improprieties.** Contractor shall immediately advise the NMSIF Executive Director of any concerns about ethical improprieties on the part of NMSIF personnel or any individuals associated with a particular claim. Contractor must also self-report any potential ethical improprieties involving Contractor's personnel.

## **II. Communication**

- A. With rare exceptions, NMSIF requires e-mail communication due to its quick, efficient, and paperless nature. All e-mailed correspondence sent to NMSIF must display the NMSIF claim number in the subject line of the email.
- B. Assignments from NMSIF will appoint an NMSIF file handler as the Contractor's primary NMSIF contact for the matter. NMSIF may also designate additional NMSIF personnel to whom Contractor should communicate (or copy on communications). The file handler designated by NMSIF shall have the ultimate responsibility for the assigned matter and will be the person with whom Contract Counsel will have their primary working relationship in terms of litigation strategy, internal impressions, work product, and Contract oversight, approval of costs, settlement authority requests, and other day-to-day administrative issues which may arise.

## **III. Media Relations and Promotion**

- A. Any media inquiry relating to an assigned matter or NMSIF's relationship with the Contractor must be referred immediately to NMSIF. The Contractor shall not make statements to the media regarding NMSIF matters without securing advance approval from NMSIF. If no approval can be obtained, Contractor shall issue a statement of no comment in response to any media inquiry.
- B. NMSIF does not authorize the Contractor to advertise or promote its relationship with NMSIF, other than listing NMSIF as a client.

## **IV. Billing Requirements**

### **A. Hourly Billing Rates – General Requirements**

#### **1. Monthly Due Dates, End of Fiscal Year Billing**

- A. Contractor shall submit invoices to NMSIF for services rendered and expenses incurred on a monthly basis using the prescribed submission mechanism.
- B. Late submissions of bills or invoices will result in delayed payments and may result in reduction of future case assignments. Continued late submissions will be considered non-compliance with the terms of this contract and may result in termination of Contract.
- C. Invoices for services rendered or expenses incurred during the last month of a Fiscal Year as defined by the New Mexico Self-Insurers' Fund are subject to

NMSIF closing procedures. Firms must follow all NMSIF guidance when submitting expenses subject to the NMSIF closing procedures.

- D. In compliance with the terms set forth in Exhibit B, Contractor must submit a detailed statement of invoice accounting for all services performed and expenses incurred.
  - 1. If the Fund finds that the services are not acceptable, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action.
  - 2. Upon certification by the Fund that the services have been received and accepted, payment shall be tendered to the Contractor.
  - 3. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked.
  - 4. The Fund shall not incur late charges, interest, or penalties for failure to make payment within normal guidelines.

## 2. Exhibit A and Amendments

- A. Per the terms of the Professional Services Agreement, authorized billers and applicable billing rates are set out in Exhibit A. Compensation and hourly billing rates for all personnel who work on a matter are subject to the schedule of rates defined in Exhibit B.
- B. Each authorized biller must be listed on Exhibit A. NMSIF will reject invoices that include billers not listed on the most current version of Exhibit A. NMSIF will also reject invoices that include work performed by a non-authorized biller prior to execution of that biller's Exhibit A.
- C. Firms may request to amend the list of authorized billers by writing to the NMSIF Executive Director. The request letter shall provide a business reason that would enable a reasonably prudent business professional to agree that the request to amend Exhibit A is sufficiently justified.
- D. Firms shall submit a proposed substitute Exhibit A that is signed by an authorized representative and dated with the request letter.
- E. The proposed substitute Exhibit A is not effective unless and until it is signed by the NMSIF Executive Director or designee. The NMSIF Executive Director has sole authority to determine whether reason to amend Exhibit A is sufficient and may deny the request if the provided justification is deemed insufficient.
- F. When adding new personnel to Exhibit A, firms must provide a resume and rate for each individual the firm is proposing to add.
- G. Request to remove persons need not include a resume but the firm must provide reasons supporting the removal.
- H. Periodic additions and deletions should be included in the same request letter.
- I. Contractors shall not bill for work performed by individuals not listed on the most recent version of Exhibit A.

3. One-Tenth Hour Increments

- A. Time records shall represent the actual time required to perform the task or activity listed. Records shall be kept in time increments of 0.10 (one-tenth) of an hour.

4. Overhead and Administrative Costs

- A. Hourly billing rates include all items of overhead. Overhead includes all administrative or general costs incidental to the operation of the firm.
- B. Overhead expenses are not separately reimbursable. Overhead includes but is not limited to the following administrative tasks:
  - 1. Time spent on electronic filing of pleadings, routine copying, faxing, filing or retrieving from files, organization or indexing of pleadings, correspondence or other documents you prepare or receive.
  - 2. Time spent on initial review, listing or copying of incoming mail to determine appropriate routing, filing, etc.
  - 3. Time spent on scheduling appointments, depositions, or meetings, including travel or court reporter arrangements.
  - 4. Preparation and review of monthly billing statements.
  - 5. More than two hours responding to NMSIF-ordered auditor inquiries on any individual matter.
  - 6. Time associated with compliance to these practices and procedures or to any legal audit, either internal or external, of bills and expenses.
  - 7. Maintenance of a calendar or tickler system.
  - 8. The review of third-party billing statements.
  - 9. Time associated with investigating conflicts.
  - 10. Clerical time related to reviewing, opening or closing files.
  - 11. Other similar tasks.

**B. Schedule of Rates**

The following rates for standard litigation/assist/consultation assignments apply to Contracts Awarded to consult and defend the Liability Fund:

Attorneys – Standard Litigation/Assist/Consult Assignments

<b>Years of Experience Practicing Law (from date of licensure)</b>	<b>Corresponding Hourly Rate</b>
0 to 1.99 years	\$ 95.00
2 to 4.99 years	\$ 125.00
5 to 9.99 years	\$ 145.00
10+ years	\$165.00

Paralegals – Standard Litigation/Assist/Consult Assignments

<b>Qualifications Certifications</b>	<b>Corresponding Hourly Rate</b>
Meet the requirements of Supreme Court Rule 20-102 and are active members of the Paralegal Division of the New Mexico State Bar Association or Certification of having passed the National Legal Assistant’s Certifying Exam administered by the National Association of Legal Assistants	\$ 80.00

Law Clerks – Standard Litigation/Assist/Consult Assignments

<b>Qualifications Certifications</b>	<b>Corresponding Hourly Rate</b>
Law Clerks who are in an ABA accredited law school	\$ 60.00
Law Clerks with Juris Doctorates pending admission to the State Bar of New Mexico.	\$80.00

NMSIF may request that law firms Awarded Contracts to defend the Liability Pool accept assignments to pursue subrogation interests on claims impacting the Liability Pool. Firms that agree to accept subrogation assignments shall submit monthly progress invoices pursuant to the specialized hourly rate schedule below. After NMSIF agrees to resolve a subrogation matter, *and* collects a recovery, the Contractor shall be paid an additional amount, equal to twenty percent (20%) of the net recovery. (Recovery is defined as gross recovery, net of fees and costs paid by NMSIF.)

Specialized Hourly Rate – Subrogation Assignments

<b>Law Firm Staff</b>	<b>Corresponding Hourly Rate</b>
Paralegals and Law Clerks	\$ 25.00
Attorneys 0 to 4.99 years	\$ 45.00
Attorneys 5 to 9.99 years	\$ 55.00
10+ years	\$ 65.00

The following rates apply to Contracts Awarded to defend the Worker's Compensation Pool in matters before the Workers Compensation Administration and appellate courts:

Attorneys.

<b>Years of Experience Practicing Law (from date of licensure)</b>	<b>Corresponding Hourly Rate</b>
0 to 4.99 years	\$ 125.00
5 to 9.99 years	\$ 145.00
10+ years	\$ 165.00

Paralegals.

<b>Qualifications Certifications</b>	<b>Corresponding Hourly Rate</b>
Meet the requirements of Supreme Court Rule 20-102 and are active members of the Paralegal Division of the New Mexico State Bar Association or Certification of having passed the National Legal Assistant's Certifying Exam administered by the National Association of Legal Assistants	\$ 80.00

Law Clerks

<b>Qualifications Certifications</b>	<b>Corresponding Hourly Rate</b>
Law Clerks who are in an ABA accredited law school	\$ 60.00
Law Clerks with Juris Doctorates pending admission to the State Bar of New Mexico.	\$80.00

**C. Billing Limitations**

1. Eight Hour Per Day Maximum

- A. Unless previously approved by NMSIF, no Contractor is authorized to bill more than eight (8) hours per matter per day.

2. In-Firm Conferences

- A. Unless attended in person or telephonically by the NMSIF contact, NMSIF will not pay for intra-office conferences.

3. One Attorney Per Meeting

- A. NMSIF requires that only one attorney attend meetings, conferences, depositions, hearings, trials, and other events.
- B. Unless pre-approved by the NMSIF file handler in writing, NMSIF will not pay for the attendance of more than one attorney at any event.

4. Non-Billable Ancillary Activities

- A. Unnecessary or unapproved depositions, preparation of summaries or abstracts, or trial preparation (considering the imminence of trial, case complexity, and probability of trial).
- B. Time spent researching issues common to civil practice in New Mexico.
- C. Summer Associate time if the individual Summer Associate is not listed as a Law Clerks or as a Paralegal on the most recent version of the firm's Exhibit A.
- D. Unauthorized or "We thought you would like to know" communications which are not specific to assigned litigation.
- E. Marketing or promotional activities.
- F. Charges once a matter is closed or terminated.

ALTERNATE LANGUAGE FOR WORKERS' COMPENSATION CONTRACTS ONLY

5. Workers' Compensation Fee Limitations

- A. Billings for fees and expenses on workers' compensation assignments are subject to all applicable limits set forth in the Workers' Compensation Act, associated rules, and as otherwise provided by law.

**D. Billing Format**

1. Invoices

- A. Firms must use the billing template provided by NMSIF for all invoices. NMSIF will reject bills that use an unacceptable invoice template.
- B. Firms must invoice fees and expenses separately. NMSIF will reject invoices that include both fees and expenses. The following circumstances may result in delayed payment or cause NMSIF to deny payment on an invoice:
  - 1. Failure to manage billing on assignments and incurring fees in excess of Contract balance;
  - 2. Failure to include the NMSIF claim number on an invoice;
  - 3. Failure to timely submit a litigation risk analysis, quarterly status update, or root cause analysis;
  - 4. Failure to submit status reports as requested by NMSIF; or



5. Failure to act in accordance with NMSIF directives.
- C. Bills must be submitted in an electronic format as determined by NMSIF and may include the most appropriate/accurate code from the Uniform Task-Based Management System developed by the American Bar Association and the American Corporate Counsel Association.

2. Description of Services Rendered and Expenses Incurred

- A. All bills must include a chronological listing of services showing at least the NMSIF case number, the date of services, a description of tasks, the authorized biller(s) who completed the task, the number of hours expended by each authorized biller, and the rate at which those hours were billed.
- B. All bills must include a description of each task completed in sufficient manner that NMSIF can ascertain the benefit derived from each service. Specific rules for sufficient descriptions include.
  1. Time entries for conferences and telephone calls shall identify the participants and the substance of the communication. For example: "Conference with F.T.E. Jones to prepare for her deposition on 5/19/94." – 2.3 hours.
  2. Time entries for drafting documents shall identify the document by title, subject matter and, where necessary, identify the document by date. For example: "Draft answers to plaintiffs interrogatories of 4/15/94." -3.10 hours.
  3. Time entries for review of documents shall identify the author, title, matter and when necessary, the date. For example: "Receipt and review of plaintiffs' reply to NMSIF's motion to compel production of documents of 4/30/94."- 0.60 hours
- C. NMSIF will not pay invoices that include blocked or lumped billing entries, except where minimal time is spent on a related activity. Blocked or lumped billing is a billing entry that assigns one amount of time to more than one task. Examples of prohibited blocked or lumped billing entries include:
  1. "Prepare for and attend deposition of Professor Smith." – 4.50 hours.
  2. "Receipt and review of plaintiffs reply to defendant's motion to compel production of documents of 4/30/94; Conference with F.T.E. Jones to prepare for her deposition on 5/19/94; Draft answers to plaintiffs' interrogatories of 4/15/94." - 6.00 hours.
- D. Generic descriptions acceptable for billing purposes include:
  1. Attention to matter,
  2. Review case and issues,
  3. Conference,
  4. Review Correspondence,
  5. Arrangements,
  6. Telephone Call,
  7. Discovery,
  8. Motion work,
  9. Work on Project or case,
  10. Pleading,

11. Work on file,
12. Prepare for meeting,
13. Work on Discovery, or
14. Receive/review documents.

## **E. Reimbursable Expenses**

1. Reimbursement for allowable expenses shall be invoiced separately from fees. At Contractor's discretion, expense invoices may be submitted twice a month. Copies of documentation for all expenses must accompany every bill or invoice submitted for reimbursement. Failure to submit proper documentation may result in a reduction in a firm's payment due to unsubstantiated expenses.
2. Travel Expenses and Mileage
  - A. Local travel expenses, within a 30 mile radius, are not reimbursable.
  - B. With prior authorization from the assigned File Handler, Personnel traveling on NMSIF business may submit reimbursement for reasonable travel expenses.
  - C. NMSIF has sole discretion to determine if travel expenses are reasonable.
  - D. Unreasonable or excessive travel costs will not be paid.
  - E. Mileage will be reimbursed pursuant to NMAC 2.42.2.11(B)(1).
  - F. Firms must bill travel expenses and mileage separately from fees and must be submitted to NMSIF within the fee schedule listed above. Firms should refer to NMAC 2.42.2.1 *et. seq.* for travel and per diem reimbursement guidelines. NMSIF will not pay bills for travel or mileage that does not comply with this provision. Out of State and overnight travel requires prior written approval from NMSIF. The request should be e-mailed to the assigned file handler, as early as possible, and detail at least:
    1. The reason for the requested travel,
    2. Efforts to appear via teleconference/video conference/other electronic means,
    3. The proposed travel location,
    4. Estimates of travel time and fees, and
    5. Estimates of travel expenses.
3. Each expense item should be separately itemized, showing the date the expense was incurred, a descriptive explanation of the charge, the amount of the charge, and the timekeeper incurring the charge.
4. Reasonable, reimbursable expenses will be compensated at actual cost. Actual cost is defined as the amount paid, net of any discounts, to a third-party provider of goods or services.
5. Unless otherwise agreed, NMSIF requires that appropriate documentation be retained to substantiate all expenses. For outside vendor expenses, appropriate documentation consists of actual vendor receipts rather than charge account receipts (except for restaurant charges).

6. Prior to the retention of all experts or consultants, Contractor must obtain NMSIF approval and provide NMSIF with the proposed scope of work, fee information and estimated expenses.
7. Charges for overnight delivery and messenger services should not be routine and, if utilized, must be authorized by your NMSIF contact in writing.
8. Extraordinary Expenses - NMSIF must pre-approve extraordinary expenses such as computerized litigation support services, videotaping depositions, etc.

## **F. Non-Reimbursable Expenses**

### **1. General Non-Reimbursable Expenses.**

- A. Items of expense considered overhead are part of the professional's hourly or alternative rate, and are not reimbursable.
- B. Such expenses include, but are not limited to office rent, conference rooms, equipment rental, computer software, computerized research (including, but not limited to, computer legal research and investigation database access time, downloading or copying fees), printing and photocopying for internal office use, office supplies, word processing and secretarial time and overtime, utilities, local transportation, telephone, facsimile transmissions, facsimile receipt, books, in-town meals, routine postage, overnight messenger service fees, and overtime meals.
- C. NMSIF reserves the right to reject statements, billings, and/or invoices for non-reimbursable expenses.
- D. Surcharged rates by paralegals or other personnel shall not be reimbursed.

### **2. Waivable Filing Fees**

- A. NMSIF expects firms to apply for fee waivers whenever possible, always in New Mexico District Court, through the process proscribed by the Court(s).
- B. NMSIF will not compensate waivable filing fees.

## **V. Staffing**

### **A. Attorneys**

1. When NMSIF makes an assignment to a Contractor, it will include in its assignment email the degree to which a certain matter is delegable within the Contractor's firm. Matters which are nondelegable are to be handled exclusively by the assignee, and NMSIF will not compensate work completed by other members of the Contractor's firm in the absence of expressly granted delegatory authority.
2. For matters which are delegable in either a limited or complete capacity, NMSIF requires that the lawyer originally assigned by NMSIF have ultimate responsibility for decisions relating to each matter, regardless of authority therein delegated. The lawyer assigned by NMSIF shall identify to NMSIF, any other lawyers working on the case pursuant to its delegatory authority and explain the role of each. The number of additional lawyers shall depend on the number and complexity of the issues related to each matter. The lawyer assigned by NMSIF is ultimately

responsible for what work is being done, who is doing the work, and tracking time spent on the work. The lawyer assigned by NMSIF must also ensure that all work is useful and efficiently performed and is expected to review and be able to explain all billing related to each matter.

3. The level of expertise of the attorney shall be commensurate with the complexity of each task. For delegable matters, partners should not bill for tasks that can be performed by associates at a lower cost. Similarly, associates should not bill for tasks that can be more economically accomplished by paralegals.

## **B. Paralegals**

1. The appropriate use of paralegals is encouraged; however, payment for paralegal time is limited to those activities requiring their special expertise and does not extend to clerical tasks, unless approved in advance.
2. Individual paralegals must be pre-approved and listed in Exhibit A before billing on NMSIF cases.

## **C. Other Personnel**

1. NMSIF will pay only for the substantive legal services of authorized billers designated in Exhibit A.
2. NMSIF will not pay for the services of summer associates without prior written approval, nor will it pay for services of librarians, file clerks, data entry clerks, secretaries, word processors, computer personnel, or messengers.

## **D. Familiarization**

1. NMSIF will not pay for time spent familiarizing a new lawyer with the case if occasioned by a Staffing change within the law firm.
2. NMSIF will not pay for substituted personnel or reeducation costs due to law firm attrition.

## **E. Discontinuation of Representation**

### **1. Changes in Personnel**

- A. Whenever personnel identified in Appendix A or F of Contractor's Offer leave the firm, the firm shall notify NMSIF immediately.
- B. Upon notification, NMSIF shall determine whether to make changes in assignments.
- C. Notwithstanding any agreements among or between Contractor's principles or employees, NMSIF reserves the right to amend the Contract as appropriate to maintain assigned cases with personnel who depart the firm.
- D. Notwithstanding any agreements among or between Contractor's principles or employees, NMSIF also reserves the right to maintain any assigned case with the contracted firm in the event of personnel changes. No attorney or other professional should assume that any NMSIF matter would move to their new law firm.

## 2. Elective Discontinuation by NMSIF

- A. NMSIF reserves the right to discontinue any retention at any time without cause.
- B. NMSIF's sole obligation under either circumstance will be to reimburse the firm, in accordance with these billing practices and procedures, for work previously completed and costs actually incurred.
- C. The firm must cooperate and assist in the transition of any assigned matter including the forwarding of files and other materials.

## VI. Activities and Conduct of Assignments

### A. Initial Risk Analysis

1. Contractor will submit an initial risk analysis (IRA) in a format determined by NMSIF (located in Appendix J) within thirty (30) days of assignment. NMSIF reserves the right to amend the format of Appendix J.
2. This analysis is meant to detail the key components of exposure, an analysis of comparative fault among all implicated actors, and an estimation of any potential judgement.
3. The IRA is for internal NMSIF use only and shall not be disclosed to any other person or entity, including real parties in interest, without prior, express authority by NMSIF.
4. Billing shall be limited to no more than six (6) hours per assigned case of professional time to prepare an IRA.

### B. Quarterly Status Reports

1. Contractors shall submit quarterly status reports (QSRs) in a format determined by NMSIF (located in Appendix K) at ninety-day intervals from completion of the IRA. Upon receipt of IRA, the NMSIF file handler will issue a QSR schedule for the next two calendar years. NMSIF reserves the right to amend the format of Appendix K.
2. Contract Counsel is responsible for apprising NMSIF of changing procedural, factual, and/or other circumstances.

### C. Litigation Risk Analysis

1. Contractor will submit a litigation risk analysis (LRA) in a format determined by NMSIF (located in Appendix L) at least thirty (30) days before a mediation and/or trial date, or upon request of NMSIF. NMSIF reserves the right to amend the format of Appendix L.
2. This analysis is meant to detail the key components of exposure, an analysis of comparative fault among all implicated actors, and an estimate of any potential damages award.
3. The LRA is for internal NMSIF use only and shall not be disclosed to any other person or entity, including real parties in interest, without prior, express authority by

NMSIF.

4. Billing shall be limited to no more than six (6) hours per assigned case of professional time to prepare an LRA.

#### **D. Consultants and Experts**

1. Prior to the retention of all experts or consultants, Contractor must obtain NMSIF approval and provide NMSIF with the proposed scope of work, fee information, and estimated expenses.
2. The assigned attorney must monitor the expert/consultant's work and billing and immediately advise NMSIF of any changes to the pre-approved estimated expenses.

#### **E. Discovery**

1. Upon receipt of discovery requests, counsel must immediately forward the requests to the named party/representative and develop a plan with the named party/representative to gather substantive responses and materials.
2. No documents should be produced without a thorough review by counsel and without consideration being given to the preparation of privilege logs, a protective order, or stipulation, if appropriate.

#### **F. Pleadings and Formal Submissions**

1. For purposes of dispositive motions practice, counsel should confer with NMSIF about access to pleadings available from NMSIF's brief bank, which may be used by Contractor to amend for briefing purposes.
2. If a previously drafted pleading or standard form is available, NMSIF will pay only for the amount of time necessary to modify it for use in any new matter, not the time originally incurred to draft the standard document.

#### **G. Legal Research**

1. NMSIF approval is required prior to undertaking any major research (requiring more than three hours of professional time) on any matter. Please consult with your NMSIF contact to obtain any available source material on the topic. NMSIF will not reimburse fees for research database access or printing.
2. NMSIF requires that the attorneys selected for the representation team possess the requisite knowledge of the general legal concepts associated with the issues existing in the matter. Research shall be related to specific issues and shall not be of a general or background nature. Copies of all research memoranda shall be forwarded to NMSIF for future reference.
3. In some instances, NMSIF may decide that it is cost-effective to have legal research handled through an outsourced group, which provides legal research from experts in a given specialty. Contractor is expected to work with such firms

and their personnel to serve the best interests of NMSIF.

#### **H. Early Resolution Evaluations and Alternative Dispute Resolution**

1. NMSIF strongly encourages early settlements whenever practical and expects timely and meaningful settlement evaluations to be included as part of the required Litigation Risk Analysis.
2. NMSIF expects an early settlement or other expedited, dispositive resolution wherever possible while protecting the State of New Mexico's interests.
3. NMSIF encourages proposals for alternative dispute resolution.

#### **I. Settlement Negotiations and Conclusion**

1. In any dispute that involves medical expenses, Contractor shall make an early evaluation of any liens, and specifically advise of NMSIF's exposure under the Medicare Secondary Payer statute.
2. Once the issue is identified, NMSIF can provide compliance support by specialty counsel.
3. No settlement involving medical expenses paid by Medicare shall be negotiated or concluded without required resolution per the Medicare Secondary Payer statute.

#### **J. Root Cause Analysis**

1. To reduce future risk, a root cause analysis (RCA) must be prepared and submitted via email to NMSIF within 10 days of the filing of a final order of dismissal when a threshold settlement amount of \$10,000.00 is reached, exclusive of attorney's fees and cost/expenses.
2. Contractor may also be required to meet with the Executive head of the Agency and/or the general/chief counsel of the public entity to discuss the RCA at the request of NMSIF.
3. The form for a RCA will be found in Appendix M. NMSIF reserves the right to amend the format of Appendix M.

### **VII. Retention of Work Product and Financial Records**

- A. Firms must retain all work product substantiating Contract Counsel's billed tasks, including research notes, memoranda, and pleadings. Upon special request, firms must transmit all time sheets, billing memoranda, and other related documentation associated with any billing statement to NMSIF within five (5) business days.

### **VIII. Performance Evaluation**

- A. NMSIF will conduct periodic reviews of a respective firm's performance. These results will be published in the NMSIF annual report. Evaluative criteria will include:
  1. Customer Service – timeliness in response to NMSIF general inquiries

- (telephonic and email contact should be responded to within forty-eight (48) hours unless an intervening day is a weekend or a state holiday);
2. Billing – compliance with billing guidelines (to include adherence to billing descriptiveness requirements and timeliness of their submission);
  3. Reporting – compliance with reporting guidelines (to include adherence to form and timeliness of IRAs, QSRs, LRAs, and RCAs);
  4. Advisement – ability of Contractor to predict, with reasonable probability and specificity, their upcoming expenses; prioritization of cost containment; thoroughness of litigation strategy and its resultant nexus to desired litigation outcomes.
- B. NMSIF reserves the right to change evaluative criteria as necessary. Contractors will receive notice of such changes.



APPENDIX D

***NEW MEXICO EMPLOYEES HEALTH COVERAGE FORM***

## ***New Mexico Employees Health Coverage Form***

1. For all Contracts solicited and awarded on or after January 1, 2008: If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the Contract, Offeror must agree to have in place, and agree to maintain for the term of the Contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
  
2. Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.
  
3. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information <https://www.bewellnm.com/> .

Signature of Offeror:		Date:	
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## **APPENDIX E**

### ***LETTER OF TRANSMITTAL FORM***

## **RFP# 2021-8 Letter of Transmittal Form**

This form MUST BE COMPLETED IN FULL and signed/initialed by an authorized Principal of the Offeror Law Firm. Submission of an incomplete form WILL RESULT IN THE DISQUALIFICATION OF THE PROPOSAL.

<b>Offeror Name:</b> (must match detail in Substitute W-9)	
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Offeror has Principals/Owners/Directors/Partners with at least five (5) years general civil litigation experience.

Completed Substitute W-9 Attached

**NOTE: Preference will be given to vendors who agree to accept payment via ACH (automatic deposit).**

Offeror is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

<b>NM Taxation and Revenue ID (CRS) Number:</b>	XX-XXXXXX-XXX
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Offeror proposes to provide legal services and seeks to secure Contracts which support defense of:

- The Liability Pool:**  
Requiring expertise in one or more of the following areas of law: general tort/public liability per the Tort Claims Act NMSA § 41-4-1 (*et seq.*); medical malpractice; law enforcement and corrections liability; employment law; civil rights; insurance, subrogation and contractual indemnity; construction; property rights and usage; and class action litigation;
  
- The Worker's Compensation Pool:**  
Requiring expertise in matters before the Workers Compensation Administration and appellate courts.

**Acceptance (Initial):**

	On behalf of the submitting organization named in item #1, above, I accept the Conditions Governing the Procurement as required in Section II of the RPF.
	On behalf of the submitting organization named in item #1, above, I accept the prescribed schedule of billing rates set forth in Section IV(h) of the RPF.

<b>Information for the person(s) authorized by the organization to negotiate terms and contractually obligate this Offeror (Must be available to execute Contracts between May 8 and May 28, 2021)</b>	
<b>Name</b>	
<b>Title:</b>	
<b>Email Address:</b>	
<b>Telephone Number:</b>	

<b>Information for the person authorized by the organization to clarify/respond to queries regarding this Offer:</b>	
<b>Name:</b>	
<b>Title:</b>	
<b>Email Address:</b>	
<b>Telephone Number:</b>	

<b>Information for the person designated by the organization to receive notices associated with any Contract awarded via this procurement:</b>	
<b>Name:</b>	
<b>Title:</b>	
<b>Email Address:</b>	
<b>Telephone Number:</b>	

<b>Information regarding use of subcontractor (Select one)</b>	
	<b>No subcontractor will be used in the performance of any resultant Contract OR</b>
	<b>The following subcontractor will be used in the performance of any resultant Contract (Attach extra sheets as needed):</b>

<b>Please describe any relationship with any entity (other than Subcontractor listed in (5) above) which will be used in the performance of any resultant Contract (Attach extra sheets as needed):</b>

<b>Authorized Signature:</b>		<b>Date:</b>	
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## APPENDIX F

The proposal must include an electronic form of the form attached as Appendix F. Offerors shall complete Appendix F which includes a KEY PERSONNEL matrix that identifies attorneys with five years or more of legal experience who the offering firm expects to supervise legal work assigned by NMSIF. Appendix F also includes a draft Exhibit A to the Professional Services Contract, a form for Offerors to complete with a proposed list of each individual who may provide billable services (including Key Personnel, other billing attorneys, paralegals and law clerks).

Either *curriculum vitae* or narrative detail shall be attached to Appendix F and address the following for each proposed biller identified in the draft Exhibit A to the Professional Services Contract:

1. Area(s) of legal experience, e.g., general tort liability (including highway), medical malpractice, law enforcement and corrections liability, employment law, civil rights, insurance, subrogation and contractual indemnity, construction, property rights and usage, class action litigation, and worker's compensation. (Please do not provide extensive or uninformative case lists);
2. A summary of the attorney's general litigation experience;
3. A summary of the attorney's experience in federal and/or state administrative/regulatory proceedings;
4. Date licensed as an attorney in the State of New Mexico, and other bar admission dates; and Summary of the attorney's educational background, special training, and awards.
5. For Paralegals and Legal Assistants, attach documentation evidencing their qualifications and compliance with the requirements set forth in this RFP.

NMSIF retains the right to request additional information demonstrating the requisite experience.

## Appendix F CONTRACTOR'S KEY PERSONNEL

<b>Firm Name:</b>												
<b>Firm Address:</b>												
<b>Primary Contact for Legal Work:</b>												
<b>Areas of Demonstrated Expertise</b> <i>Please place an X in each applicable column for that attorney.</i>												
Key Personnel	Years in Practice	GL/Tort	Med Mal	Law Enf	Civil rights	Employment	Subro	Ins/Indem	Construction	Property	Class Action	Work Comp

**Draft**  
**Exhibit A for Appendix F**  
**CONTRACTOR'S AUTHORIZED BILLABLE STAFF**

<b>Firm Name:</b>	
<b>Firm Address:</b>	
<b>Primary Contact for Legal Work:</b>	
<b>Primary Contact for Billing and A/R:</b>	

**Areas of Demonstrated Expertise**  
*Please place an X in each applicable column for that attorney.*

Authorized Billers	Years in Practice	GL/Tort	Med Mal	Law Enf	Civil rights	Employment	Subro	Ins/Indem	Construction	Property	Class Action	Work Comp



***APPENDIX G***  
***RESIDENT VETERAN'S CERTIFICATION***

## Resident Veterans Preference Certification

<b>NAME OF CONTRACTOR:</b>	
----------------------------	--

Hereby certifies the following in regard to application of the resident veterans' preference to this procurement:

**Please check one box only**

- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than \$1M allowing me the 10% preference on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.
  
- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$1M but less than \$5M allowing me the 8% preference on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.
  
- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$5M allowing me the 7% preference on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

"I agree to submit a report, or reports, to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31, the following to be true and accurate:

"In conjunction with this procurement and the requirements of this business' application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under Sections 13-1-21 or 13-1-22 NMSA 1978, when awarded a contract which was on the basis of having such veterans preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.

"I understand that knowingly giving false or misleading information on this report constitutes a crime."

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

<b>Signature of Business Representative*:</b>		<b>Date:</b>	
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\*Must be an authorized signatory for the Business. The representations made in checking the boxes constitutes a material representation by the business that is subject to protest and may result in denial of an award or termination of award of the procurement involved if the statements are proven to be incorrect.

***APPENDIX H***

***Resident Vendor Certificate***

## ***APPENDIX H***

### ***Resident Vendor Certificate***

Qualifying applicants should attach the relevant certificate and any other documentation as specified by the New Mexico Taxation and Revenue Department and NMSA 1978, § 13-1-21.

For more information, see: <http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx>

## ***APPENDIX I***

### ***Local Public Body Certification Form***

#### ***SAMPLE AFFIDAVIT***

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Offeror is required to provisionally complete the attached Local Public Body Certification form and CIRCLE THE APPROPRIATE RESPONSE TO ITEMS 1 AND 2  
And CHECK THE CORRECT LINE IN ITEM 3.

Completion of the Local Public Body Certification form requires Offeror to analyze its business association and determine whether any individual who has a substantial ownership interest (defined as greater than 20%) is required to disclose status as a current or former local public body employee or the family member of a current local public body employee.

Any individual required to disclose status as current or former local public body employee or the family member of a current state employee or legislator must be prepared to submit an affidavit at the time the Contract is executed. A sample affidavit is attached hereto and a final form will be submitted for execution at the time of Contract Award. Timely completion and return of the Affidavit will be critical.

# SAMPLE AFFIDAVIT -- *for review only*

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**If applicable, an affidavit will be forwarded for execution at the time of award.**

NEW MEXICO SELF-INSURERS' FUND )  
 ) ss.  
COUNTY OF SANTA FE )

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

1. I am a former employee of the \_\_\_\_\_ (name of Local Public Body), having separated/retired (**circle one**) from this employment as of \_\_\_\_\_ (date).
2. I am a current employee of the \_\_\_\_\_ (name of Local Public Body), or the family member (spouse, parent, child, sibling by consanguinity or affinity) of a current employee of a local public body. Being a current employee or family member of a current employee of a local public body, I hereby certify that I obtained this Professional Services Agreement pursuant to Sections 10-16-7 or 10-16-9 NMSA 1978, that is, in accordance with the Procurement Code except that this Professional Services Agreement has NOT been awarded via the sole source or small purchase procurement methods.
3. The Local Public Body and I have entered into a professional services agreement in the amount of \$\_\_\_\_\_.
4. Section 10-16-8.A(1) NMSA 1978 of the Governmental Conduct Act does not apply to this Professional Services Agreement because I neither sought a contract with the Local Public Body, nor engaged in any official act which directly resulted in the formation of the Professional Services Agreement while an employee of the Local Public Body.
5. To the best of my knowledge, this Professional Services Agreement was awarded in compliance with all relevant provisions of the New Mexico Procurement Code (13-1-28, et. seq., NMSA 1978).

FURTHER, AFFIANT SAYETH NOT.

\_\_\_\_\_  
Name

Subscribed and sworn to before me by \_\_\_\_\_ (name of former employee) this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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

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

## **APPENDIX J**

**PRIVILEGED & CONFIDENTIAL**  
**ATTORNEY WORK PRODUCT**  
**ATTORNEY/CLIENT PRIVILEGE**

TO: (NMSIF Supervising Attorney)  
FROM: (Contractor)  
DATE:  
RE: (Case Name and Claim Number)  
(State Entity and/or State Employee(s))

### **INITIAL RISK ANALYSIS**

1. What do you see as the significant legal or factual issues in the case?
2. In what way might the issues be resolved, assuming the facts as stated?
3. If litigation is undertaken, what you envision in terms of:
  - A. Any steps that should be taken immediately (e.g., to prevent the running of a statutory deadline or to preserve evidence);
  - B. Legal research and factual investigation;
  - C. Possible pleadings (including cross-complaints), motions, and discovery the parties are likely to undertake;
  - D. The litigation's likely duration and expense; and
  - E. The range of recovery or exposure for the client (if reasonably based on the information provided in the first interview and known to you).
4. The possibility of early settlement and the feasibility of a minimal cost approach to the litigation.

## **APPENDIX K**

### **PRIVILEGED & CONFIDENTIAL** **ATTORNEY WORK PRODUCT** **ATTORNEY/CLIENT PRIVILEGE**

TO: (NMSIF Supervising Attorney)  
FROM: (Contractor)  
DATE:  
RE: (Case Name and Claim Number)  
(State Entity and/or State Employee(s))

### **QUARTERLY STATUS REPORT**

**Has a scheduling order been entered in this case?** If no, when do you anticipate this will be completed?

**What is the case status?** Please provide a short description of the current status of the proceedings, anticipated motions and discovery, and settlement discussions or their absence.

### **Please review your initial Litigation Summary and Risk Analysis**

- Have any new facts become available?
- Have you identified any new legal issues? Defenses?
- Has your assessment of the strengths and weaknesses of your factual and legal position changed?
- Has your assessment of the possible results and probabilities changed?
- Has your strategy in this matter changed?
- Has your anticipated legal budget changed?

### **Additional Comments/Personal Impressions:**

### **Conclusion and Recommendation:**



## APPENDIX L

**PRIVILEGED & CONFIDENTIAL**  
**ATTORNEY WORK PRODUCT**  
**ATTORNEY/CLIENT PRIVILEGE**

TO: (NMSIF Supervising Attorney)  
FROM: (Contractor)  
DATE:  
RE: (Case Name and Claim Number)  
(State Entity and/or State Employee(s))

### LITIGATION RISK ANALYSIS

- a. **What is the relationship/status of the parties?** (Note: Please do not merely refer to the parties as the plaintiff/defendant; include more descriptive terms to identify the relationship/status at issue, e.g., supervisor/employee)
- b. **Procedural Facts:**
- What happened before the parties entered the judicial system?
- c. **Substantive Facts:**
- What is the cause of action?
  - What is the relief requested?
  - What points of law are in dispute (Please identify applicable statutes, rules, regulations)
- d. **Please provide a summary of any significant legal issues.**
- What are the key facts relating to each point of law in dispute (legally relevant facts)?

- What are the Defenses?
  - Please discuss prior holdings or relevant dicta in similar cases.
  - Is there risk of an adverse precedent in this case? Benefit to an adverse precedent?
- e. **What is your assessment of the strengths and weaknesses of your factual and legal position?** Please include such factors as the substance and impact of the evidence, the availability and quality of witnesses, the sympathy or not of the adversary, the friendliness or hostility of the tribunal, and the competence and experience of opposing counsel.
- f. **What are the possible results and probabilities?** Please provide an assessment of damages, including possible results.
- g. **What is your strategy in this matter?**
- Is Alternative Dispute Resolution Feasible?
  - Are there any other settlement alternatives?
  - Please provide a discovery plan including the scope of discovery and timeline for implementation of the discovery in order to support the legal theories and remedies.
  - Please provide a draft scheduling order.
- h. **What is the anticipated legal budget?**
- i. **Additional Comments/Personal Impressions:**
- j. **Conclusion and Recommendation:** Examples may include early efforts to settle or mediate the dispute, targeted discovery with an eye towards settlement, or full litigation.

## **APPENDIX M**

**PRIVILEGED & CONFIDENTIAL**  
**ATTORNEY WORK PRODUCT**  
**ATTORNEY/CLIENT PRIVILEGE**

### **ROOT CAUSE ANALYSIS**

As you are aware, NMSIF resolved the above referenced case for \$ \_\_\_\_\_  
Enclosed is a copy of the Judgment dated \_\_\_\_\_

The purpose of a root cause analysis is to help guide state entities in thinking about the root causes of the litigation in to help them avoid future legal difficulties

Examples of a “Root Cause” include, but are not limited to:

- Lack of understanding or knowing
- Failure to follow policy or procedure
- Inadequate planning or review of plans
- Inaccurate corporate strategy
- Lack of communication
- Lack of preventative maintenance
- Inadequate design of equipment or system
- Beliefs ingrained in organizations culture
- Extrinsic factors
- Barriers or administrative/physical controls

**PROBLEM:**

**ROOT CAUSE:**