**Solicitation Number SK22-24**

**Request for Proposals to Provide Legal Services to Assist the Office of the Attorney**

**General regarding Legal Challenge(s) to President Biden’s Bears Ears National Monument**

**Proclamation and Grand Staircase-Escalante National Monument Proclamation**

**RFP Designation: Public**

**Request for Proposals Solicitation Number SK22-24**

**Legal Services regarding Legal Challenge(s) to President Biden’s Bear Ears National Monument Proclamation and Grand Staircase-Escalante National Monument Proclamation**

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| RFP Title: | Legal Services regarding Legal Challenge(s) to President Biden’s Bears Ears National Monument Proclamation and Grand Staircase-Escalante National Monument Proclamation |
| RFP Posting Date: | October 21, 2021 |
| Question Period End: | October 29, 2021 at 5:00pm MDT |
| Closing (Proposals Due): | November 5, 2021at 5:00pm MDT |
| Issuing Procurement Unit: | Office of the Utah Attorney General (“OAG”) |
| Conducting Procurement Unit: | OAG |
| Designated Procurement Officer: | Melissa Holyoak, Utah Solicitor General, by appointment of Sean Reyes, Utah Attorney General |
| Bid Contact: | Solomon Kingston, Utah Division of Purchasing and General Services: [skingston@utah.gov](mailto:nsanchez@utah.gov) |

Contract Duration: This Request will continue until the conclusion of litigation, including all appeals, or until a final determination is made by the OAG to not pursue litigation further.

Comments: This Request for Proposals seeks legal services to assist the OAG regarding legal challenges to President Biden’s Bears Ears National Monument Proclamation and Grand Staircase-Escalante National Monument Proclamation as further specified below.

**Item Response Form**

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| Item: | Legal Services to Assist regarding Legal Challenge(s) to President Biden’s Bears Ears National Monument Proclamation and Grand Staircase-Escalante National Monument Proclamation |
| Unit Price: | Hourly rate fees, plus reimbursement of authorized costs and expenses |
| Delivery Location: | Legal Services may be provided in Utah and other locations |
| Quantity: | 1 contract |
| Description: | **This Request for Proposals seeks legal services to assist the OAG with evaluating and pursuing potential legal challenge(s) to President Biden’s Bears Ears National Monument Proclamation and Grand Staircase-Escalante National Monument Proclamation.** |

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**REQUEST FOR PROPOSALS**

***LEGAL SERVICES REGARDING LEGAL CHALLENGE(S) TO PRESIDENT BIDEN’S BEARS EARS NATIONAL MONUMENT PROCLAMATION AND GRAND STAIRCASE-ESCALANTE NATIONAL MONUMENT PROCLAMATION***

**Solicitation Number** SK22-24

The Office of the Attorney General of the State of Utah (“OAG”) hereby issues a Request for Proposals (“RFP”) which seeks a law firm or firms that will provide legal services to assist the OAG regarding potential legal challenge(s) to President Biden’s Bears Ears National Monument Proclamation and Grand Staircase-Escalante National Monument Proclamation. This RFP is designed to provide interested Offerors with sufficient basic information to submit Proposals. It is not intended to limit a Proposal’s content or exclude any relevant or essential data. Offerors are encouraged to expand upon the specifications in order to demonstrate service capability. This RFP is issued in accordance with the Utah Procurement Code, Utah Code 63G-6a-101, *et seq.*, as well as Utah Code 67-5-1, *et seq.*, “Attorney General,” and applicable Rules found in the Utah Administrative Code, including Rules R33-7 and R105-1. If any provision of this RFP is deemed to conflict with any statute or administrative rule, the applicable statute or administrative rule will take precedence.

**Part 1: Overview and Instructions**

**1.0 EXECUTIVE SUMMARY**

The OAG is soliciting proposals from qualified law firms to assist the OAG with State of Utah legal actions regarding President Biden’s Monument Proclamations, as defined below in Section 1.3. Other state entities may have claims, which may be asserted by the OAG. The State of Utah, including the OAG, should be the potential client for purposes of this RFP.

Interested law firms should prepare a Cost Proposal Form, Exhibit “B,” and a Technical Proposal Form, Exhibit “C,” and should submit them through U3P, as defined below, by the closing date and time. The Cost Proposal and the Technical Proposal **must** be completely separate, and nothing contained in the Cost Proposal may be included or referenced in the Technical Proposal.

**1.1\_\_\_\_DEFINITIONS**

The following terms used in this RFP shall have the meanings specified:

“Attorney General” or “OAG” means the Office of the Utah Attorney General and all staff.

“Contract” means a contract in substantially the form set forth in Exhibit “A” between the OAG on behalf of the State of Utah and, and the successful Offeror responding to this RFP.

“Cost Proposal” means the Cost Proposal that must be completed by the Offeror using the form attached as Exhibit “B” to this RFP, and which must be submitted separately from the Technical Proposal. The Cost Proposal specifies the hourly rates for fees for Lead Counsel, Senior Attorneys, Junior Attorneys, and Paralegals on the Litigation Team, and any related items for which the Offeror may charge.

“Cover Sheet” means the cover sheet using the form attached as Exhibit “C” to this RFP to be completed and submitted by the Offeror with its Proposal.

“Deadline” means the Closing (Proposals Due) date and time, as stated above.

“Evaluation Committee” means the committee that will evaluate and score each Proposal, making a recommendation to the Procurement Officer. The Evaluation Committee consists of Brian Tarbet, Chief Civil Deputy, chair; Joni Jones, Litigation Division Director, member; Jake Garfield, Deputy Director (PLPCO), member; Brian Steed, Executive Director (DNR), member; Lance Sorenson, Assistant Attorney General, member.

“GRAMA” means the Utah Government Records Access and Management Act, Utah Code sections 63G-2-101 through 63G-2-901.

“Legal Services” means all services to be performed by the successful Offeror under the Contract. It includes, but is not limited to, evaluating and pursuing legal actions regarding President Biden’s Proclamation 10285, Bears Ears National Monument, and President Biden’s Proclamation 10286, Grand Staircase-Escalante National Monument, and may include related services such as briefing state agencies, the Governor, or the Legislature concerning the Monuments Litigation.

“Litigation Team” means the individuals employed or retained by the Offeror who will be the primary persons providing Legal Services under the Contract, as described in Section 2.1 of this RFP, “Mandatory Minimum Requirements/Qualifications.”

“Monuments Litigation” means the legal action(s) challenging President Biden’s Proclamation 10285, Bears Ears National Monument, and President Biden’s Proclamation 10286, Grand Staircase-Escalante National Monument, and any appellate cases that derive from the case(s).

“Offeror” means a law firm, or group of law firms, that submits a Proposal in response to this RFP.

“Procurement Officer” means Utah Solicitor General Melissa Holyoak, who has been designated as the procurement officer for purposes of this RFP by Sean Reyes, Utah Attorney General, pursuant to Utah Code §62G-6a-103(59)(a)(ii).

“Proposal” means the Offeror’s response to this RFP, including the Technical Proposal, interview (if the Offeror is selected for an interview pursuant to Section 4.2), and Cost Proposal.

“Question Period” means the period, ending on the Question Period End Date set forth above, during which a potential Offeror may ask questions about the RFP through U3P.

“Reference Materials” means the reference materials described herein which shall not exceed 30 pages, to be submitted by the Offeror in response to this RFP.

“RFP” means this Request For Proposals, including all exhibits, formal responses to questions made through U3P, and any other addenda.

“U3P” means the Utah Public Procurement Place or system Utah State Purchasing is using to solicit procurements, (formerly SciQuest/Jaggaer), which may be accessed at this Internet address: <http://bids.sciquest.com/apps/Router/PublicEvent?CustomerOrg=StateOfUtah>

“Standard Terms and Conditions for Services” means Attachment 1 to the Contract. The Contract is attached as Exhibit “A” to this RFP.

“State” means the State of Utah.

“Technical Proposal” means the Technical Proposal as described in Section 3.1 of this RFP.

Terms defined in the Contract shall have the same meaning for purposes of this RFP.

**1.2 PURPOSE OF REQUEST FOR PROPOSAL (RFP)**

The purpose of this RFP is to enter into a Contract with a qualified Offeror to provide Legal Services assisting the OAG in initiating and litigating the Monuments Litigation, as defined above. Subject to supervision by the OAG, the Offeror will be expected to perform substantially all of the day-to-day Legal Services needed to litigate the Monuments Litigation.

The Offeror shall specify a Litigation Team composed of attorneys, paralegals, and other support personnel, as defined in Section 2.1 of this RFP, “Mandatory Minimum Requirements/ Qualifications,” who will have primary responsibility for providing the Legal Services. The Offeror to whom the Contract is awarded will be expected to provide all Legal Services in an expeditious and professional manner, under the direction of, and in consultation with, the OAG. An Offeror may be composed of one law firm, or of two or more law firms. If an Offeror is composed of more than one law firm, the Technical Proposal shall clearly state why it is advantagous to employ multiple law firms and will describe how the work will be divided between the participating law firms.

The Procurement Officer has determined that the RFP process will provide the best value to the Issuing Procurement Unit because (a) this is a procurement for professional legal services in a particularly complex and specialized area of the law, (b) cost is not the most important factor to be considered in making the selection that is most advantageous to the Issuing Procurement Unit, and (c) factors such as the level of professional skill involved in litigating the Monuments Litigation are highly significant in making the selection that is most advantageous to the Issuing Procurement Unit. Those factors can best be evaluated through an RFP process. *See,* Utah Code § 63G-6a-702(1) and (2).

**1.3 SUMMARY OF THE MONUMENTS PROCLAMATIONS**

The Antiquities Act provides that “[t]he President may, in the President’s discretion, declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated on land owned or controlled by the Federal Government to be national monuments.” 54 U.S.C. § 320301(a). Accordingly, “[t]he President may reserve parcels of land as part of the national monuments.” 54 U.S.C. § 320301(b). “The limits of the parcels shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.” 54 U.S.C. § 320301(b).

On October 8, 2021, pursuant to his authority under the Antiquities Act, President Biden issued two proclamations relating to two previously designated and subsequently diminished national monuments in Utah: Proclamation 10285, Bears Ears National Monument, and Proclamation 10286, Grand Staircase-Escalante National Monument.

On December 28, 2016, President Obama created the Bears Ears National Monument in Proclamation 9558, which reserved 1.35 million acres within the boundaries of the monument. On December 4, 2017, President Trump issued Proclamation 9681, reducing Bears Ears National Monument lands to 201,876 acres, but included 11,200 acres not previously described by President Obama. President Biden’s October 8, 2021 Bears Ears Proclamation “restored” the monument area to include the 1.35 million acres described in President Obama’s 9558 Proclamation, supplemented by the 11,200 acres added by President Trump’s 9681 Proclamation.

In September 1996, President Clinton designated the Grand Staircase-Escalante National Monument in Proclamation 6920. The boundaries encompassed 1.87 million acres. On December 4, 2017, President Donald Trump issued Proclamation 9682 to reduce the monument by over 860,000 acres. President Biden’s Grand Staircase-Escalante Monument Proclamation “restored” the area to again include 1.87 million acres.

Please note that this summary is provided for convenience of potential Offerors only for the purpose of gaining a rudimentary understanding of the nature of the Monuments Litigation. Nothing in this summary is intended to waive any claims available to the State of Utah.

**1.4 ISSUING PROCUREMENT UNIT, CONDUCTING PROCUREMENT UNIT, AND RFP SOLICITATION NUMBER**

The OAG is the Issuing Procurement Unit and the Conducting Procurement Unit for this RFP and all subsequent addenda relating to it. The Procurement Officer for this procurement is Melissa Holyoak. The solicitation number for this RFP is listed above, and must appear on all Proposals, correspondence, and documentation relating to this RFP.

**1.5 QUESTIONS AND ANSWERS**

All questions ***MUST*** be submitted through U3P before the Question Period End Date. Questions submitted through any other channel will not be answered.Answers may be provided individually or compiled into one document. All answers will be posted on U3P. The OAG will make reasonable efforts to timely answer all questions which are submitted by the Question End Date, October 29, 2021, at 5:00 p.m. Mountain Standard Time.Answers disseminated by the OAG through U3P shall serve as the official and binding position of the OAG and will constitute addenda to this RFP.

Questions, exceptions, or notification to the OAG of any ambiguity, inconsistency, excessively restrictive requirement, or error in this RFP, ***MUST*** be submitted as a question through U3P before the Question Period End Date.

Offerors should periodically check U3P for answered questions and addenda before the Deadline. It is the responsibility of each Offeror to submit its Proposal as required by this RFP, including any requirements contained in any answered questions and/or addenda.

**Exceptions to the scope and/or content of this RFP that have not been previously addressed within the Q&A period of the procurement are not allowed and may result in the Offeror’s Proposal being considered non-responsive.**

**1.6 RESTRICTIONS ON COMMUNICATIONS**

From the RFP Start Date listed above until an Offeror is awarded a Contract and the award is published, Offerors are prohibited from communicating regarding this RFP with the Procurement Officer, Evaluation Committee members, or the Cost Proposals evaluators identified in Section 4.1 of this RFP, except through U3P or as otherwise provided in this RFP (*i.e.,* during interviews with selected Offerors). Offerors are likewise prohibited from communicating directly with Utah Attorney General Sean D. Reyes.

Offerors may communicate with other OAG employees for non-substantive administrative purposes such as scheduling, but otherwise Offerors should not contact any OAG staff regarding this RFP. Questions about the mechanics of submitting a Proposal using U3P may be addressed to the Bid Contact listed on the first page of this RFP. However, any substantive question relating to this RFP itself must be submitted through U3P in accordance with Section 1.5 of this RFP. Any unauthorized communications by an Offeror with any person listed in this section may result in disqualification of the Offeror.

Responses must be based solely upon the criteria and instructions set forth in this RFP, questions answered on U3P or related addenda. Offerors cannot rely upon information from any other source, such as communications with OAG staff, regarding how to respond to this RFP.

**1.7 SUBMITTING A PROPOSAL**

By submitting a Proposal in response to this RFP, the Offeror acknowledges and agrees that the requirements, scope of work, and evaluation process outlined in this RFP are understood, fair, equitable, and are not unduly restrictive. Any exceptions to the scope or content of this RFP must be addressed within the Question Period. The Offeror further acknowledges that it has read this RFP, along with any attached or referenced documents, including the Standard Terms and Conditions for Services.

By submitting a Proposal in response to this RFP, the Offeror acknowledges that it is familiar with and agrees to be bound by the laws governing this procurement, including but not limited to, the Utah Procurement Code, Utah Code 63G-6a-101, *et seq.*, as well as Utah Code 67-5-1, *et seq.*, “Attorney General,” and applicable Rules found in the Utah Administrative Code. Without limitation, the Offeror agrees to be bound by the provisions of Utah Administrative Code Rules R33-7 and R105-1.

All costs incurred by an Offeror in the preparation and submission of a Proposal, including any costs incurred during interviews, oral presentations, and/or product demonstrations are the responsibility of the Offeror, may not be billed to the OAG or the State, and will not be reimbursed by the OAG or the State.

**Each Offeror must submit:**

1. **A Technical Proposal, consisting of:** 
   1. **A cover sheet using the form attached as Exhibit “C,”**
   2. **A narrative, as described below, which shall not exceed 5 single spaced pages, and**
   3. **Reference materials, as specified below, which shall not exceed 30 pages; and**
2. **A separate Cost Proposal using the form attached as Exhibit “B.”**

The Cost Proposal will be evaluated independently from the Technical Proposal and, as such, **must** be submitted separately from the cover sheet, Technical Proposal, and reference materials. Failure to submit the Cost Proposal separately may result in a Proposal being deemed non-responsive and ineligible for contract award.  *See* Utah Code §§ 63G-6a-704(3) and 709(3).

**Proposals must be received by the Deadline.** Proposals received after the Deadline will be considered late and ineligible for consideration. Proposals must be submitted electronically through U3P.

**Electronic submission instructions:**

When submitting a Proposal electronically through U3P, please allow sufficient time to complete the online forms and to upload Proposal documents. This RFP will end at the Deadline. If an Offeror is in the middle of uploading a Proposal when the Deadline arrives, the system will stop the upload process and the Proposal will not be accepted by U3P, and the attempted submission will be considered late and ineligible for consideration.

Electronic Proposals may require uploading of electronic attachments. U3P will accept a wide variety of document types as attachments. However, the State is unable to view certain documents. Therefore, **DO NOT** **submit** documents that are **embedded (zip files), movies, wmp, encrypted, or mp3 files.**  All documents must be uploaded in U3P as separate files.

**Proposals will be evaluated in accordance with Part 4 of this RFP.**

**1.8 CONTRACT AWARD INTENT AND LENGTH OF CONTRACT**

This RFP will result in a single contract award.

The Procurement Officer has determined that the term of contract for this procurement should not be limited to five years but shall instead continue until the Monuments Litigation is either litigated to finality (including any appeals), settled, dismissed, or the Contract is terminated pursuant to its termination provisions. This determination is based upon the fact that a period longer than five years may be necessary in order to resolve the Monuments Litigation, an undefined period is customary for industry standards (litigation contracts are not customarily limited in time, but rather are for the duration of the litigation), and a longer period is in the best interest of the Issuing Procurement Unit, in order to assure continuity of legal services with respect to the Monuments Litigation. *See* Utah Code § 63G-6a-1204(7).

The Contract permits both the OAG and the Offeror to terminate the contract either for cause or without cause (termination for convenience), subject to appropriate notice and transfer of responsibility provisions, and subject to obtaining any necessary approvals (*e.g*., for substitution of counsel) from any courts in which any portion of the Monuments Litigation is pending.

**1.9 COMPENSATION AND PRICE GUARANTEE PERIOD**

The Contract provides for compensation consisting of hourly fees, plus reimbursement for certain approved costs and expenses.

All pricing must be guaranteed for the duration of the contract.

The Contract contains provisions concerning compensation should either the OAG or the successful Offeror terminate the Contract before the Monuments Litigation is resolved.

**1.10 MAINTAINING EXPENSE AND TIME RECORDS**

The successful Offeror shall maintain detailed records of all expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial transactions that relate to the legal services provided for three years after the Contract terminates. Certain statutes and legal theories may allow for the recovery of costs and expenses by the State, and an application for recovery of costs and expenses may be made in the discretion of the OAG. Costs and expenses may also be sought as part of any settlement, at the discretion of the OAG.

The successful Offeror is required to maintain detailed contemporaneous time records for the attorneys and paralegals working on the case(s) and promptly provide the records to the attorney general upon request. The successful Offeror shall retain these records for three years after the Contract terminates and shall provide these records to the OAG at any time, upon request. Certain statutes and legal theories may allow for the recovery of attorneys’ fees by the State, and an application for recovery of fees may be made in the discretion of the OAG. Attorneys’ fees may also be sought as part of any settlement, at the discretion of the OAG.

If costs, expenses, or attorneys’ fees are recovered, those recoveries will be paid to the OAG. The amount of costs, expenses, or attorneys’ fees awarded to the State with respect to work done by the Offeror may be different from the amounts paid to the Offeror.

**1.11 HOURLY FEES**

The Contract provides for the payment of hourly fees. The Offeror shall indicate the hourly rate for Lead Counsel, each Senior Attorney, each Junior Attorney, and each Paralegal on the Cost Proposal Form, Exhibit “B.” Those hourly rates shall not exceed any publicly posted hourly rates for those individuals.

In general, hourly fees will only be paid for legal work that is performed by lawyers and paralegals. The successful Offeror will be expected to use junior lawyers to perform appropriate work when doing so is reasonable given the nature of the work. Paralegal time will only be billed for paralegal work and not for general secretarial or other staff work, such as photocopying or scanning documents. The successful Offeror shall consult with and take direction from the OAG regarding the allocation of legal and paralegal work.

**1.12 LITIGATION COSTS AND EXPENSES, INCLUDING EXPERTS**

The Contract provides that certain litigation costs and expenses (*e.g*., travel) incurred by the successful Offeror shall be reimbursed by the OAG at no more than 100% of the amount actually incurred by the Offeror (*i.e*., with no “administrative overhead” or other surcharge). In general, expenses incurred internally by the successful Offeror, such as in-house document related expenses (*e.g*., for storage, management, review software owned or leased by the Offeror without regard to the specific Monuments Litigation, or copying), shall not be reimbursed. Permissible reimbursements are not specified in the Cost Proposal and will be paid in addition to the any hourly fees.

If preapproved by the OAG, the additional cost to the successful Offeror of leasing or using discovery document review software for the needs of the Monuments Litigation will be a reimbursable expense (*e.g.,* document review software platforms that charge based upon the amount of data uploaded).

To the extent feasible, the successful Offeror shall obtain preapproval from the OAG for all reimbursable litigation costs and expenses, including travel, and the OAG reserves the right to purchase the items directly if doing so is practical and if the OAG determines that doing so is likely to save the State money. However, the Offeror and OAG may enter into a Memorandum of Understanding regarding this process at any time. Such a Memorandum of Understanding may detail the process by which certain services are procured, may include limitations on the cost of such services, and may exempt some specific litigation costs and expenses from the need for preapproval. Reimbursements for travel expenses shall not exceed those established for employees of the State of Utah, as governed by the laws and rules of the State of Utah, including Utah Admin. Code R25-7-1, *et seq*.

If the OAG approves the hiring of experts who are not in-house employees of the Offeror, the OAG shall contract directly with such experts, and they shall be compensated outside the scope of this RFP and the Contract. The OAG shall give appropriate consideration to the recommendations of the successful Offeror with respect to retaining specific experts. If the Offeror has in-house employee experts (other than lawyers or paralegals) with relevant skills (*e.g*., an in-house CPA, economist, or technical expert), the OAG may agree to employ such experts at the Offeror’s usual rate if the OAG determines that doing so is in the best interest of the State (*e.g*., for reasons of price or efficiency). The process for obtaining experts may be set forth in a Memorandum of Understanding.

**1.13 STANDARD CONTRACT TERMS AND CONDITIONS, EXCEPTIONS, AND NEGOTIATIONS**

Any contract resulting from this RFP will be in the form of the attached Contract, which includes Attachment 1: Standard Terms and Conditions for Services, subject to any modifications approved pursuant to this subsection.

Offerors may propose reasonable exceptions and/or additions to the Contract, for example to comply with ethical requirement of different state bar associations. Any such request must be submitted with the Technical Proposal. Exceptions and/or additions submitted after the date and time for receipt of Proposals will not be considered and will only be considered as Change Orders after execution of the Contract. Offerors may not submit requests for exceptions and/or additions by reference to any website or URL. Offerors may submit questions regarding the Contract only during the Question Period.

The OAG may accept any proposed exceptions and/or additions without negotiation and may refuse to negotiate exceptions and/or additions that the OAG determines: (a) are excessive; (b) are inconsistent with similar contracts of the Issuing Procurement Unit; (c) seek to alter warranties, insurance, or indemnification provisions that are necessary to protect the State or the OAG; or (d) are not in the best interest of the State or the OAG.

If contract negotiations are permitted, they will begin immediately upon notification to the successful Offeror of the award. Within three business days thereafter, the Offeror must provide all proposed documents in Microsoft Word format for redline editing. The Offeror must also provide the name, contact information, and access to the person(s) that will be directly involved in negotiations.

Any assertion in a Proposal that acceptance of an Offeror’s terms and conditions is mandatory is not valid and may result in the Proposal being determined to be non-responsive.

An award resulting from this RFP is subject to successful negotiation of contract terms and conditions. The OAG, at its sole discretion, will determine when contract negotiations become unproductive, which will result in termination of negotiations and no contract award to that Offeror. Immediately thereafter, the State may award the procurement to the next eligible Offeror.

**1.14 RIGHT TO REJECT PROPOSALS AND TO CANCEL OR MODIFY RFP**

The OAG reserves the right to reject all proposals and to modify or cancel this RFP at any time and for any or no stated reason and may or may not initiate a new request for proposal process for this particular procurement matter. The OAG reserves the right to settle the Monuments Litigation without procuring Legal Services under this RFP. The OAG reserves the right to amend or modify this RFP during the procurement process, consistent with law, including extending any dates set forth herein. Any amendment or modification shall be posted on U3P.

**1.15 PROTECTED INFORMATION**

GRAMA provides that “the following records are protected if properly classified by a government entity”:

(1) trade secrets as defined in Utah Code section 13-24-2(4) of the Utah Uniform Trade Secrets Act, if the person submitting the trade secret has provided the governmental entity with the information specified in Utah Code section 63G-2-309 (Business Confidentiality Claims);

(2) commercial information or non-individual financial information obtained from a person if:

(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;

(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

(c) the person submitting the information has provided the governmental entity with the information specified in Utah Code section 63G-2-309;

…

(6)(a)(ii) records, the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, after the contract or grant has been awarded and signed by all parties, a bid, proposal, application, or other information submitted to or by a governmental entity in response to . . . a request for proposals.

Utah Code § 63G-2-305.

**Process for Requesting Non-Disclosure**: Any Offeror requesting that a record be protected under GRAMA shall, *at the time the information (Proposal) is provided to the State*:

1. Provide a written Claim of Business Confidentiality, which shall include a concise statement of reasons supporting the claim of business confidentiality (*see* Utah Code § 63G-2-309(1)); and
2. Submit an electronic “redacted” (excluding protected information) copy of the Proposal, which must clearly be marked “Redacted Version.”

The Claim of Business Confidentiality form is attached as Exhibit “D” to this RFP.

**An entire Proposal cannot be identified as “PROTECTED,” “CONFIDENTIAL,” or “PROPRIETARY,” and if so identified, will be considered non-responsive unless the Offeror removes the designation**. **Pricing, including the Cost Proposal, may not be classified as confidential or protected and will be considered public information after the award of the contract.**

**Redacted and Protected Copies:** If an Offeror submits a Proposal that contains information claimed to be business confidential or protected information, the Offeror must submit two separate Proposals: one redacted version for public release, with all protected business confidential information either blacked-out or removed, clearly marked on each page as “Redacted Version”; and one non-redacted version for evaluation purposes, clearly marked on each page as “Protected Business Confidential Version.” Failure to provide a redacted copy, or failure to properly mark both copies, may lead to disclosure of the information for which the Offeror claims business confidentiality. The State (including the OAG) shall not be liable for any harm caused by any such disclosure.

**PART 2: SCOPE OF SERVICES AND REQUIREMENTS**

**2.1 MANDATORY MINIMUM REQUIREMENTS/QUALIFICATIONS**

This section contains mandatory minimum requirements that must be met in order for a Proposal to be considered responsive. As part of the Technical Proposal, Offerors shall clearly demonstrate how they meet each of the following mandatory minimum requirements. This can be done, in part, by reference to resumes or other documents in the reference materials.

Failure to demonstrate that the Offeror meets any one of the mandatory minimum requirements will result in the Proposal being rejected pursuant to Utah Code section 63G-6a-704 and the Proposal will not move forward in the evaluation process. All of the items described in this section are non-negotiable. The Evaluation Committee shall reject any Proposal if at any meeting of the Evaluation Committee at any Stage of the procurement process a majority of the Evaluation Committee determines that the Proposal does not clearly meet any of these mandatory minimum requirements, including before or after interviews.

**Litigation Team**: The Offeror must identify the law firm or firms that will be providing the Legal Services and must specify the individuals who will constitute the core Litigation Team. At a minimum, the Litigation Team must consist of a designated Lead Counsel, up to three other designated Senior Attorneys, between two and six Junior Attorneys, and at least one paralegal. The Lead Counsel must have at least 20 years of experience litigating complex civil cases, and any other Senior Attorneys must have at least 10 years of experience litigating complex civil cases. Collectively, the group of Lead Counsel and Senior Attorneys must have experience arguing appeals to the United States Supreme Court and United States Circuit Courts of Appeals. Collectively, the group of Lead Counsel and Senior Attorneys must have experience litigating public lands issues and providing legal services to states or state attorneys general. Complex civil cases are those that require management of many potential witnesses, large quantities of documentary evidence, and numerous depositions, and that raise complex issues of law and fact. They may include, but are not necessarily limited to, class actions, MDL cases other than class actions, or other highly complex cases that involve significant discovery and motion practice.

The Litigation Team must also have sufficient Junior Attorneys (typically associates or junior partners) and paralegals to be able to effectively pursue the Monuments Litigation to trial. The Offeror may provide Legal Services using other attorneys and paralegals with the written consent of the OAG. All attorneys who are part of the Litigation Team or who work on the Monuments Litigation at any time shall be active licensed members of at least one state (or the District of Columbia) bar and one federal district court bar and be members in good standing with all bars in which they are admitted to practice. The successful Offeror shall provide certificates of good standing for members of the Litigation Team within 30 days of execution of the Contract.

**No Unresolved Apparent Conflicts of Interest:** Each Offeror must certify that no members of the Litigation Team or the law firms that employ them have, or appear to have, any conflict of interest in providing the Legal Services; alternatively, the Technical Proposal must identify any known potential conflicts or appearances of conflicts of interest. Failure to disclose such an actual or apparent conflict may, at the sole discretion of the Evaluation Committee, result in the Proposal being rejected pursuant to Utah Code section 63G-6a-704, in which case the Proposal will not move forward in the evaluation process. If the Offeror discloses any potential conflicts, the Technical Proposal must discuss potential paths to resolution, such as obtaining waivers, and the OAG after consulting with the UDC may make acceptance of the Proposal contingent upon the Offeror successfully resolving the potential conflict to the satisfaction of the OAG. Other clients of the Offeror’s law firm or firms which may have actions with or against the State in unrelated matters must also be noted in the Technical Proposal to the extent that such actions are known to the Offeror.

**Malpractice Insurance:** Each law firm who employs an attorney member of the Litigation Team shall state as part of the Technical Proposal that the firm has or commits to acquire legal malpractice insurance coverage in an amount not less than $5,000,000 per incident, which covers all attorneys from that firm who are part of the Litigation Team or who work on the Monuments Litigation. The successful Offeror will be required to present proof of such insurance prior to execution of the Contract.

**Background Checks:** The OAG reserves the right to conduct a background check of any person or entity that may assist in providing services under a response to this RFP to determine the person or entity’s fitness and qualifications to fulfill the requirements of this RFP. The OAG may reject any response to this RFP that involves services from a person or entity that the OAG determines is unfit or unqualified to fulfill the requirements of this RFP.

The OAG may require any member of the Litigation Team and anyone who works on the Monuments Litigation to obtain a criminal background check from the Utah Department of Public Safety, Bureau of Criminal Investigation, which shall be provided promptly to the OAG. The Offeror will bear the cost of any such background checks. If the OAG determines that an individual has failed a criminal background check at any time, that individual shall be excluded from the Litigation Team and barred from working on the Monuments Litigation. If such a determination occurs during the procurement process, and involves the Lead Counsel, a Senior Attorney, a Junior Attorney, or a Paralegal member of the Litigation Team, the Offeror may designate another person to serve that role. The Evaluation Committee may rescore the Offeror’s Proposal if the individual was listed as Lead Counsel or as a Senior Attorney, and by a majority vote may determine that the failed background check makes the Proposal non-responsive.

**2.2 DETAILED SCOPE OF WORK AND CONTROL OF LITIGATION**

Subject to the provisions of this section and the Contract, the Offeror is expected to act as lead counsel for the Monuments Litigation, and to devote the resources necessary to bring the Monuments Litigation to successful conclusion(s), without the need for active day-to-day support by the OAG’s attorneys or staff, except as described below. The Technical Proposal should demonstrate that the Offeror has the resources and expertise necessary to fulfill that role.

The Lead Counsel and one or more other Litigation Team attorneys are expected to be counsel of record in the Monuments Litigation, and the Offeror will have primary responsibility for all litigation functions, such as drafting pleadings and motions, conducting discovery, arguing motions, trying or settling cases, and handling appeals. However, as set forth in more detail in the Contract, the Offeror’s authority to act will be subject to the requirements of Utah Code section 67-5-33(6)(a), which mandates that the OAG’s designated attorney “retains complete control over the course and conduct” of the Monuments litigation, including overall supervision, final authority over pleadings, and the right to attend settlement conferences. Furthermore, the OAG in its discretion may assign attorneys and staff to work with the Offeror at any stage in the litigation, including participating with the Litigation Team attorneys in any trial, or to handle any specific functions, such as briefing and arguing a particular motion or arguing an appeal.

**Part 3: Proposal Contents and Format**

**3.1 TECHNICAL PROPOSAL**

The Evaluation Committee shall evaluate each Technical Proposal in accordance with the criteria set forth in Section 4.2. For ease of evaluation, the Technical Proposal should clearly demonstrate how the Offeror meets each evaluation criterion. However, those criteria are not intended to limit a Proposal’s content or exclude any relevant or essential data. Offerors are at liberty and are encouraged to expand upon the criteria set forth in this RFP in general and in section 4.2 in particular, in order to demonstrate the Offeror’s capability to provide the State with the services sought by this RFP. Technical Proposals should be concise, straightforward, and prepared simply and economically. Expensive displays, bindings, or promotional materials are neither required, nor desired.

Technical Proposals should not identify or address specific legal strategies that could constitute protected or confidential information, such as attorney advice or work product, because doing so may lead to inadvertent disclosure of those strategies. Proposed legal strategies may be discussed during the interviews, which are a mandatory part of the RFP process for this procurement.

All materials submitted become the property of the State. Materials may be evaluated by anyone designated by the State as part of the Evaluation Committee. Materials submitted may be returned only at the State's option.

The Technical Proposal must be organized as follows, using the specific headings indicated. Failure to format the Technical Proposal as follows may result in disqualification.

1. **RFP Cover Sheet:** using the attached Exhibit “C.”
2. **Narrative**: This document shall not exceed 5 single-spaced, typed pages, exclusive of the RFP cover sheet, organized as follows:
   1. **Executive Summary:** The executive summary shall briefly describe the Offeror's Technical Proposal. This summary should highlight the major features of the Technical Proposal. The reader should be able to determine the essence of the Technical Proposal by reading the executive summary.
   2. **Identification of the Litigation Team:** The Offeror shall identify each member of the Litigation Team by title (Lead Counsel, Senior Attorney, Junior Attorney, Paralegal), and provide sufficient information to demonstrate that each member meets the minimum experience qualifications for that individual. Reference can be made to resumes contained in the Reference Materials. If Senior Attorneys are designated in addition to the Lead Counsel, the Offeror shall identify the reason that each Senior Attorney is included in the Litigation Team (*e.g.*, appellate specialist) and the role that the Offeror anticipates for that Senior Attorney.
   3. **Detailed Proposal:** This section should include, at a minimum, a concise overview of the following: The Offeror's assessment of the work to be performed, the Offeror’s ability and qualifications (including how the Offeror meets all mandatory minimum qualifications set forth in section 2.1), and the general approach to the Monuments Litigation that the Offeror anticipates taking. Offerors should include a description of any experience that they have in handling cases similar in nature to the Monuments Litigation. Offerors should reserve discussion of any specific confidential case strategies for the interview phase. The detailed proposal should emphasize the success that the Offeror has had in litigating other similarly complex litigation.
   4. **Potential Conflicts of Interes**t**:** The Offeror must identify any actual or potential conflict of interest or appearance of a conflict of interest that might arise during the contract, and shall propose potential resolution mechanisms, such as obtaining waivers. If no conflicts are identified or expected, the Offeror shall so state in this section.
   5. **Statement of Insurance**: The Offeror shall state that each law firm who employs an attorney member of the Litigation Team has or commits to acquire legal malpractice insurance coverage in an amount not less than $5,000,000 per incident, which covers all attorneys and paralegals from that firm who are part of the Litigation Team or who work on the Monuments Litigation.
   6. **Exceptions and/or Additions to the Standard Terms and Conditions:** Any proposed exceptions or additions to the Contract must be submitted in this section. The Offeror must also provide the name, contact information, and access to the person(s) who will be directly involved in negotiations. Unless the Offeror identifies proposed exceptions or additions to the Contract in this section, the Offeror shall be presumed to have accepted the Contract as written.
3. **Reference Materials**: This section should not exceed 30 pages of materials, organized as follows:
   1. **Claim of Business Confidentiality Form:** **If the Offeror is making a claim of business confidentiality, the Claim of Business Confidentiality form attached as Exhibit “D” to this RFP must be placed at the beginning of the Reference Materials.**  If the Offeror’s Proposal contains protected/proprietary information, the Offeror must comply with section 1.15 of this RFP. Each Offeror acknowledges that its Proposal response (or the redacted copy if the Offeror has complied with section 1.15 and the State has accepted the designations) will be made public upon the completion of the procurement or the State’s receipt of a GRAMA request. The Offeror will not be notified of any GRAMA request made to the State for Offeror’s Proposal response. If the Offeror submits a redacted copy, the State will respond to a GRAMA request for the Offeror’s Proposal response with the Offeror’s redacted copy. However, if the Offeror fails to submit a redacted copy, the State may respond to a GRAMA request with the Offeror’s Proposal response, which would result in the Offeror’s purportedly protected/proprietary information being made public. The Offeror acknowledges that notations in the header, footer, or watermark of the Proposal, while required to avoid confusion as between redacted and non-redacted versions, will not be considered sufficient to constitute a request for non-disclosure of protected/proprietary information. Failure to comply with this section and section 1.15 of this RFP releases the State from any obligation or liability arising from the inadvertent release of the Offeror’s information.
   2. **Resumes:** Include a resume for the Lead Counsel and each Senior Attorney. Each resume should clearly establish that the attorney meets the relevant minimum experience requirement set forth above. Offerors may include a brief qualifications summary in lieu of a resume for every other member of the Litigation Team. The brief qualifications summary should include the name and job title of the individual, any undergraduate or graduate college degrees obtained (including year and institution), and a brief statement concerning work experience and other qualifications that may be relevant. Offerors are encouraged but not required to submit a table summarizing the resumes as they pertain to the Mandatory Minimum Requirements of section 2.1 (*e.g.*, showing the years of experience of the Lead Attorney and the Senior Attorneys, levels of appellate experience, active bar licenses, etc.).
   3. **Firm Materials:** Any documents about the law firms, their qualifications, clients, or successes.
   4. **Other Materials:** Include other materials that demonstrate the Offeror’s capabilities or that otherwise may help the Evaluation Committee. For example, publicly available information about the Offeror’s other relevant experience with respect to former or current litigation.

Offerors may include in their reference materials URLs to websites that contain other relevant information, such information about specific cases that the Offeror has litigated, or additional information about Litigation Team members. However, members of the Evaluation Committee are not required to review such websites.

**3.2 COST PROPOSAL**

**The Cost Proposal consists solely of the Cost Proposal Form, Exhibit “B.” The Cost Proposal will be evaluated independently from the Technical Proposal and must be submitted separately from the Technical Proposal. Inclusion of that information within the Technical Proposal,** **will result in the Proposal being deemed as non-responsive in violation of Utah Code section 63G-6a-707(6).**

The Cost Proposal Form identifies each member of the Litigation Team by role (Lead Counsel, Senior Attorney, Junior Attorney, or Paralegal) and assigns an hourly rate to each individual. Hourly rates will be fixed for the term of the Contract unless otherwise authorized in writing by the OAG.

**Part 4: Proposal Evaluation**

**4.1 PROPOSAL EVALUATION**

All Technical Proposals in response to this RFP will be evaluated by the Evaluation Committee in a manner consistent with the Utah Procurement Code, Administrative Rules, and the evaluation criteria set forth in this RFP. All Offerors that are selected for interviews pursuant to section 4.2, Stage 3, below, and that receive an average Technical Proposal Evaluation Score of 500 or higher pursuant to section 4.2, Stage 4, below, will have their Cost Proposals evaluated by the OAG’s CFO or CFO’s designee who is not a member of the Evaluation Committee, in accordance with the Utah Procurement Code, Administrative Rules, and the evaluation criteria set forth in this RFP.

Each Offeror bears sole responsibility for the items included or not included in the Proposal submitted by the Offeror. Each area of the evaluation criteria must be addressed in the Proposal.

**4.2 PROPOSAL EVALUATION PROCESS**

**Stage 1: Initial Review**

In the initial phase of the evaluation process, the Evaluation Committee will review all Technical Proposals timely received. Untimely Proposals, non-responsive Proposals, Proposals that do not conform to RFP requirements, and Proposals that are initially determined to not meet the minimum mandatory requirements (refer to section 2.1) will be excluded from further consideration.

**Stage 2: Initial Technical Proposal Review**

At the conclusion of the initial review, each member of the Evaluation Committee shall independently award a single initial Technical Proposal review score to each Proposal that appears to meet the Minimum Requirements. That score will be based upon how well the written Technical Proposal appears to meet the overall requirements of this RFP, using the following five-point scale:

* Five Points (Excellent): The proposal addresses and exceeds all of the requirements or criteria described in the RFP.
* Four points (Good):  The proposal addresses all of the requirements or criteria described in the RFP and, in some respects, exceeds them.
* Three points (Satisfactory):  The proposal addresses all of the requirements or criteria described in the RFP in a satisfactory manner.
* Two points (Unsatisfactory):  The proposal addresses the requirements or criteria described in the RFP in an unsatisfactory manner.
* One point (Fail):  The proposal fails to:  
  (i)  address some or all of the requirements or criteria described in the RFP;  
  (ii)  accurately addresses some or all of the requirements or criteria described in the RFP; or  
  (iii)  demonstrate that the vendor can perform the scope of work or supply the procurement items.

Once completed, the scores of each Evaluation Committee member will be added together and divided by the number of committee members, to achieve an average score. All Offerors who submit Proposals that achieve an average score of 3.5 or better will receive an opportunity to give a presentation interview. Proposals that achieve an average score of less than 4.0 will be deemed non-responsive and excluded from further consideration. Because of the critical importance of presentation interviews to this procurement, these initial scores will not carry into Stage 3, 4, or 5 of the evaluation process.

**Stage 3: Presentation Interviews**

Each Offeror that is extended an opportunity to give a presentation interview (i.e., proposals that achieve an average score of 3.5 or better within Stage 2) must make at least the Lead Counsel available for the interview within a period of time that will be established by the Evaluation Committee. Offerors are strongly encouraged to make the Lead Counsel and any Senior Attorneys available for the interview. Interviews shall be conducted entirely electronically. All interviews must be scheduled within the interview period, which shall be November 15 to November 30, 2021, unless the interview period is extended by the Evaluation Committee or the Evaluation Committee authorizes an exception in writing due to the unavailability of key individuals. Any Offeror that does not schedule and conduct a presentation interview in a timely fashion shall be deemed non-responsive and will be excluded from further consideration.

Each interview shall be a maximum of 90 minutes long and shall begin with a presentation by the Offeror of not less than 15 nor more than 30 minutes during which the Offeror addresses the mandatory minimum qualifications, the scoring criteria, and any other matters that the Offeror chooses. During this presentation, the Offeror may choose to describe proposed strategies for handling the Monuments Litigation and may identify experts the Offeror has retained or proposes to retain. Because experts, if hired, would not be paid under the Contract but would be hired outside the Contract by the OAG, the Offeror may discuss the likely range of costs of any experts. From the end of the presentation until 10 minutes before the end of the interview, the Offeror will answer questions from the Evaluation Committee. The committee may ask different questions of different Offerors to better evaluate the relative strengths of the Offerors or in order to better understand the strategies that various Offerors may propose to use in pursuing the Monuments Litigation. At the conclusion of the committee’s question period, the Offeror shall be given 10 minutes to make a summation or to address any issues the Offeror desires.

If the Offeror decides to describe or identify any strategies, evidence, experts, or witnesses, the Offeror understands that the OAG may use such strategies, evidence, experts, or witnesses regardless of whether the Offeror is retained, and without any compensation to the Offeror if the Offeror is not selected. The Offeror also understands that all ethical duties that an attorney owes to a prospective client, including duties of confidentiality, apply to the interview.

**Stage 4: Final Technical Proposal Evaluation**

Responsive Technical Proposals of Offerors who have been interviewed will be re-evaluated by the Evaluation Committee in light of all information learned during the interviews. After all presentation interviews have been conducted, the Evaluation Committee will meet to discuss the relative strengths and weaknesses of the Offerors, after which each committee member shall independently score each Offeror using the Technical Proposal Evaluation Criteria form set forth below, applying the same five-point scale to each criteria that was used in Stage 2:

|  |  |  |
| --- | --- | --- |
| **Evaluation Criteria (scored on a 1 – 5 scale)** | **Criteria Weight** | **Possible Points** |
|  |  |  |
| A: Overall quality and professional qualifications of Lead Counsel and the designated Senior Attorneys, including intellectual and interpersonal skills as demonstrated during the presentation interviews. | 50 | 250 |
| B: Overall quality and capabilities of the Junior Attorneys. | 25 | 125 |
| C: The Offeror’s vision as to how to pursue the Monuments Litigation, as demonstrated by the Technical Proposal and presentation interviews. | 25 | 125 |
| D: The Offeror’s experience in handling matters similar in nature to the Monuments Litigation including challenges to executive action. | 25 | 125 |
| E: The Offeror’s experience with complex litigation, including the quality of results obtained by the Offeror in other cases. | 25 | 125 |
| F: Offeror’s specific knowledge of issues relevant to this RFP, such as facts and legal issues relating to the Antiquities Act, or the Bear’s Ears and Grand Staircase-Escalante Monuments. | 25 | 125 |
| **TOTAL POSSIBLE TECHNICAL SCORE** |  | **875** |

The evaluations of the individual Evaluation Committee members will be added together and averaged, to obtain a single Technical Score for each Offeror. Offerors that achieve an average Technical Score of 500 technical points or more will proceed to **Stage 5: Cost Proposal Evaluation**. Offerors with an average Technical Score of less than 500 points will be deemed non-responsive and excluded from further consideration.

**Stage 5: Cost Proposal Evaluation**

Proposals that receive a Technical Score of at least 500 shall be deemed to be Qualified Proposals, which will advance to the Cost Proposal evaluation stage.

**Calculating the Cost Proposal Score:** The Cost Proposal Score shall be the ratio of the Baseline Hourly Rate to the Qualified Proposal’s Hourly Rate, multiplied by 250 up to a **maximum possible Cost Score of 250 points.** The Baseline Hourly Rate shall be the lowest Blended Hourly Rate of the Qualified Proposals.

A Blended Hourly Rate shall be calculated for each Cost Proposal as follows:

* 15% of the hourly rate listed in the Cost Proposal Form for the Lead Counsel;
* 15% of the average of the hourly rates listed in the Cost Proposal Form for the Senior Attorneys (or an additional 15% of the hourly rate of the Lead Counsel if no Senior Attorneys are included in the Proposal);
* 50% of the average of the hourly rates listed in the Cost Proposal Form for the Junior Attorneys; and
* 20% the average of the hourly rates listed in the Cost Proposal Form for the Paralegal.

The Blended Hourly Rate is intended to standardize an approximation of the percentage of work that the OAG estimates may be performed by the Lead Counsel, Senior Attorneys, Junior Attorneys, and Paralegals. However, it is not intended to have any impact on the actual management of the case once an offeror is selected.

**Best and Final Offers Stage**

Offerors may be required to make best and final offers at any of the foregoing stages, if the conditions set forth in Utah Code section 63G-6a-707.5 exist, at the discretion of the OAG. Note that the conditions permitting a best and final offer process are narrowly limited, and that it is unlikely there will be a best and final offer stage with respect to this RFP. Offerors should make their best and most cost-effective Proposals initially, without relying on the possibility that they will be allowed to make best and final offers later.

**4.3 ERRORS IN PROPOSALS**

The provisions of Utah Code section 63G-6a-706 shall govern the correction or withdrawal of an unintentionally erroneous Proposal, or the correction or cancellation of an award or contract that is based upon an unintentionally erroneous Proposal. A decision to permit the correction or withdrawal of a Proposal or the correction or cancellation of an award or a contract shall be supported in a written document, signed by the Designated Procurement Officer.

**Part 5: Proposal Award Process**

**5.1 DETERMINING THE PRESUMPTIVE WINNING PROPOSAL**

Each Proposal shall receive a final Total Score that is the sum of the Technical Score (Stage 4) plus the Cost Score (Stage 5). The Proposal with the highest Total Score shall be evaluated to determine if it constitutes the best value to the State, as set forth in Section 5.2. The Offeror whose Proposal offers the best value shall be given an opportunity to negotiate any negotiable contractual terms pursuant to Section 1.13 prior to executing a Contract. If the OAG determines that the contract term negotiations have become unproductive, that Proposal will be deemed non-responsive, and the Offeror whose Proposal offers the next highest value will be given a chance to negotiate any negotiable contractual terms. Once the OAG and an Offeror agree upon any negotiable terms, the Contract shall be awarded and executed in accordance with Section 5.3.

**5.2 DETERMINATION OF BEST VALUE**

In determining which Proposal provides the best value to the OAG, the Evaluation Committee and the OAG, pursuant to Utah Code section 63G-6a-708, shall prepare a written justification statement that: (i) explains the score assigned to each evaluation category; and (ii) explains that the Proposal with the highest total combined technical and cost score provides the best value to the OAG, or if a cost benefit analysis is required, the final determination based on the cost benefit analysis.

The OAG reserves the right to award the contract to a technically qualified Offeror with a lower score in the event the high scoring offer is determined to not be the best value offered to the State, based upon a cost-benefit analysis.

**5.3 AWARD OF CONTRACT**

After the completion of the Proposal evaluation process and the determination of best value, the Evaluation Committee shall submit the Proposals, Contract (as modified, if applicable), evaluation scores, and justification statement, including the determination of best value, to the Procurement Officer for review and final determination of a contract award.

The Procurement Officer shall review the information provided by the Evaluation Committee, and shall either approve the committee’s recommendation, or modify it, or take any other action consistent with the Utah Procurement Code and other applicable law.

After approval by the Procurement Officer, the State shall award the Contract as soon as practicable (subject to the requirements of Utah Code section 63G-6a-708) to the eligible responsive and responsible Offeror with the highest score, subject to Utah Code section 63G-6a-709(2) of the Utah Procurement Code, provided that any negotiable terms are successfully negotiated, and that the RFP is not canceled in accordance with Utah Code section 63G-6a-709(2)(b).

All Offerors should note that Utah Code section 63G-6a-110(6) requires the Issuing Procurement Unit, for the duration of any contract awarded through this RFP, to make available contact information for the winning contractor to the Department of Workforce Services in accordance with Utah Code section [35A-2-203](http://le.utah.gov/code/TITLE35A/htm/35A02_020300.htm).  This requirement does not preclude the winning contractor from advertising job openings in other forums.

**5.4 PUBLICIZING THE AWARD**

The Issuing Procurement Unit shall, on the next business day after the award of a Contract is announced, make available to each Offeror and to the public a written statement that includes:

1. the name of the Offeror to which the contract is awarded, and the total score awarded by the Evaluation Committee to that Offeror;
2. the justification statement required under Utah Code section 63G-6a-708, including any required cost-benefit analysis; and
3. the total score awarded by the Evaluation Committee to each Offeror to which the contract is not awarded, without identifying which Offeror received which score.

**Exhibit “A”**

*Proposal Solicitation # SK22-24*

**PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT (the “**Agreement**”) is made by and between the Office of the Utah Attorney General (the “**OAG**”), P.O. Box 140857, Salt Lake City, Utah 84114-0857 and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter “**Law Firm**”).

**RECITALS**

WHEREAS, the OAG has the responsibility of providing legal representation for the State of Utah in connection with the matters referred to herein, and is authorized to retain counsel for such representation pursuant to Utah Admin. Code R105-1; and

WHEREAS, the OAG is coordinating legal services for the State of Utah in legal action(s) challenging President Biden’s Proclamation 10285, Bears Ears National Monument, and President Biden’s Proclamation 10286, Grand Staircase-Escalante National Monument, and any appellate cases that derive from the case(s) (the “**Monuments Litigation**”); and

WHEREAS, the OAG conducted a competitive procurement process pursuant to Part 7 of the Utah Procurement Code and determined that the Law Firm presented the best of the proposals received; and

WHEREAS, the Law Firm desires to furnish the services described in this Agreement and is duly authorized and capable of rendering such services, and it is in the best interest of the State of Utah to retain the Law Firm;

**AGREEMENT**

NOW THEREFORE, in consideration of the foregoing recitals (which by this reference are incorporated herein) and the following terms and conditions, the sufficiency of which the parties hereby acknowledge, the parties agree as follows:

1. **Employment of Law Firm.** The OAG hereby retains the Law Firm to assist and represent the OAG in connection with the Monuments Litigation. Subject to the OAG’s ultimate direction and approval, the Law Firm will conduct research, advise, and represent the OAG concerning the Monuments Litigation; and any other matters concerning the Monuments Litigation as otherwise approved in writing in advance by the OAG.

The Law Firm agrees to provide all legal services that are reasonably necessary for such representation under the general direction of the OAG. Among other things, the Law Firm will prepare and file all pleadings, motions, memoranda, briefs, and other documents in appropriate courts, wherever located. The Law Firm will also conduct negotiations and provide representation at all hearings, trials, and other appearances required in the Monuments Litigation. The Law Firm will also submit interim reports to the OAG and meet with the OAG upon request regarding the nature, progress, and extent of the legal services provided, and regarding the Law Firm’s reasonable forecasts about the remaining work. The Law Firm will manage the work in a cost-effective manner and in the best interests of the State of Utah.

The Law Firm accepts the work required by this Agreement and agrees to discharge the duties involved in such employment under the terms and conditions of this Agreement.

2. **Compensation.** Subject to paragraph 3 below and Attachment 2 (attached hereto and incorporated herein), the OAG agrees to pay the Law Firm for its reasonable services rendered hereunder for the attorneys and other personnel shown, and at the hourly rates identified by the Law Firm in Exhibit “B” of the RFP.

3. **Monthly Billings.** The Law Firm shall submit monthly billings for its fees and allowable costs hereunder by the 15th day of the month which follows the month when services were rendered, or as otherwise directed by the OAG. The Law Firm shall e-mail its billing statements to Cecilia Lesmes at: clesmes@agutah.gov, or as otherwise directed. Monthly billings submitted after the time required herein may be subject to substantial delay in payment. The Law Firm understands and agrees that although it is retained by the OAG, the Law Firm shall be paid from funds or accounts identified by the State of Utah and the OAG shall not be liable for payment from its budget unless expressly provided in writing.

4. **Limitation on Services Provided.** The Law Firm agrees that decisions regarding the scope, extent, and breadth of the representation shall remain with the OAG. In addition, the Law Firm recognizes that unless additional funding is made available and agreed to by the parties, the fees and costs chargeable under this Agreement shall not exceed those allowed in Attachment 2.

5. **Records and Files**. The Law Firm agrees to maintain pleading, correspondence, and evidentiary files in connection with the Monuments Litigation, and agrees to maintain financial records in accordance with generally accepted accounting procedures which properly reflect all allowable expenditures of any nature that are necessary for the performance of this Agreement. All such files, records, books, and other documents shall be and are confidential and may constitute attorney work product. Each and all of said files, records, books and documents shall be made available for inspection by the OAG upon reasonable request, and copies (in any format) shall be provided to the OAG upon reasonable request at a reasonable charge.

6. **Indemnification**. The Law Firm agrees to protect, indemnify and save harmless the OAG, the State of Utah and their agents and employees, from and against all claims, demands, damages, and causes of action of every kind or character arising out of or in any way connected with the performance of this Agreement, and arising, in whole or in party, out of the negligence or fault of the Law Firm. The Law Firm’s duty to pay a judgment under this indemnification provision shall be limited to the Law Firm’s proportionate share of comparative fault. The Law Firm shall defend the OAG, the State of Utah and their employees from all claims covered by this indemnification provision and shall pay its proportionate share of all costs and expenses incidental thereto, but the OAG shall have the right, at its option, to participate in the defense of any such suit without relieving the Law Firm of any obligation hereunder.

7. **Termination.** This Agreement shall continue until the Monuments Litigation is complete or until terminated. The OAG may, at any time and for any reason or no reason, terminate this Agreement immediately upon written notice. In the event of the termination of this Agreement, Law Firm shall be compensated only for fees and costs earned and incurred up to and including the date of termination. If the Law Firm thereafter expends additional time and incurs costs relative to the transfer of the case and its materials as directed by the OAG, the Law Firm will be compensated for such reasonable time and costs incurred.

8. **Independent Contractor Status.** Compensation paid to the Law Firm as specified hereunder shall be the total compensation for its services. The Law Firm is retained as an independent contractor and is responsible for withholding taxes, FICA, and payments to associates, paralegals, clerical assistants, and others from the compensation paid hereunder.

9. **Conflicts of Interest**. The Law Firm shall immediately notify the OAG in writing of any conflict of interest which may exist or hereafter arise as a result of the representation and services furnished by the Law Firm (when the Rules of Professional Conduct allow), but in no case shall the Law Firm proceed with representation that would constitute a conflict of interest (adverse to the State of Utah or any of its employees or consultants), whether or not disclosed. The Law Firm shall not proceed with the representation under this Agreement until a written resolution of such conflict, signed by the OAG, is accomplished, and the Law Firm agrees to seek a resolution of conflicts and avoid any conflict that would necessitate removing the Law Firm from the Monuments Litigation. The Law Firm represents that it has reviewed publicly filed documents regarding the Monuments Litigation, and it has disclosed to the OAG the following matter(s), as to which it is agreed that any conflict of interest is hereby waived:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

10. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties, and supersedes all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof (the Monuments Litigation). This Agreement may not be amended except by an instrument in writing signed on behalf of all parties hereto. This Agreement shall be governed in all respects, including validity, interpretation and effect, by laws of the State of Utah. The parties agree to execute any further documents or take further actions that may be necessary to comply with law, including but not limited to any federal obligations.

11. **Photocopies.** Photocopies of this Agreement shall have the same force and effect as the original.

Utah Attorney General’s Office

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

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By:

Title:

# ATTACHMENT 1

**STATE OF UTAH STANDARD TERMS AND CONDITIONS FOR SERVICES**

This is for a contract for services (including professional services) meaning the furnishing of labor, time, or effort by a contractor.

1. **DEFINITIONS:** The following terms shall have the meanings set forth below:
2. “**Confidential Information**” means information that is deemed as confidential under applicable state and federal laws, including personal information. The State Entity reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws.
3. “**Contract**” means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. The term “Contract” may include any purchase orders that result from this Contract.
4. “**Contract Signature Page(s)**” means the State of Utah cover page(s) that the State Entity and Contractor sign.
5. “**Contractor**” means the individual or entity delivering the Services identified in this Contract. The term “Contractor” shall include Contractor’s agents, officers, employees, and partners.
6. “**Custom Deliverable**” means the Work Product that Contractor is required to deliver to the State Entity under this Contract.
7. “**Services**” means the furnishing of labor, time, or effort by Contractor pursuant to this Contract. Services include, but are not limited to, all of the deliverable(s) (including Custom Deliverable, supplies, equipment, or commodities) that result from Contractor performing the Services pursuant to this Contract. Services include those professional services identified in Section 63G-6a-103 of the Utah Procurement Code.
8. “**Proposal**” means Contractor’s response to the State Entity’s Solicitation.
9. “**Solicitation**” means the documents used by the State Entity to obtain Contractor’s Proposal.
10. “**State Entity**” means the department, division, office, bureau, agency, or other organization identified on the Contract Signature Page(s).
11. “**State of Utah**” means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
12. “**Subcontractors**” means subcontractors or subconsultants at any tier that are under the direct or indirect control or responsibility of the Contractor, and includes all independent contractors, agents, employees, authorized resellers, or anyone else for whom the Contractor may be liable at any tier, including a person or entity that is, or will be, providing or performing an essential aspect of this Contract, including Contractor’s manufacturers, distributors, and suppliers.
13. “**Work Product**” means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor’s Subcontractors (either alone or with others) pursuant to this Contract. Work Product shall be considered a work made for hire under federal, state, and local laws; and all interest and title shall be transferred to and owned by the State Entity. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any State Entity intellectual property, Contractor’s intellectual property (that it owned or licensed prior to this Contract) or Third Party intellectual property.

2. **GOVERNING LAW AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.

3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all Procurement Items delivered and/or performed under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this Contract is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding, including CFR Appendix II to Part 200, will supersede this Attachment 1.

4. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor’s performance and the payments made by the State Entity to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, the State of Utah, federal auditors, and State Entity staff, access to all such records.

5. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM”:** The Status Verification System, also referred to as “E-verify”, only applies to contracts issued through a Request for Proposal process and to sole sources that are included within a Request for Proposal.

1. Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor’s new employees that are employed in the State of Utah in accordance with applicable immigration laws.

2. Contractor shall require that each of its Subcontractors certify by affidavit, as to their own entity, under penalty of perjury, that each Subcontractor has registered and is participating in the Status Verification System to verify the work eligibility status of Subcontractor’s new employees that are employed in the State of Utah in accordance with applicable immigration laws.

3. Contractor’s failure to comply with this section will be considered a material breach of this Contract.

6. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State Entity or the State of Utah, unless disclosure has been made to the State Entity.

7. **INDEPENDENT CONTRACTOR:** Contractor and Subcontractors, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State Entity or the State of Utah.

8. **INDEMNITY:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the State Entity and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor’s performance of this Contract to the extent caused by any intentional wrongful act or negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the fault of the State Entity. The parties agree that if there are any limitations of the Contractor’s liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.

9. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by federal and state employment laws, including: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90, which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities; and (v Utah's Executive Order 2019-1, dated February 5, 2019, which prohibits unlawful harassment in the workplace. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor’s employees.

10 **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, provided that the amendment is within the Scope of Work of this Contract and is within the scope/purpose of the original solicitation for which this Contract was derived. The amendment will be attached and made part of this Contract. Automatic renewals will not apply to this Contract, even if listed elsewhere in this Contract.

11. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, or proposed for debarment by any governmental department or agency, whether international, national, state, or local. Contractor must notify the State Entity within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Contract.

12. **TERMINATION:** This Contract may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and is subject to the remedies listed below. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by the State Entity, upon thirty (30) days written termination notice being given to the Contractor. The State Entity and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing. On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved Services ordered prior to date of termination.

Contractor shall be compensated for the Services properly performed under this Contract up to the effective date of the notice of termination. Contractor agrees that in the event of such termination for cause or without cause, Contractor’s sole remedy and monetary recovery from the State Entity or the State of Utah is limited to full payment for all Services properly performed as authorized under this Contract up to the date of termination as well as any reasonable monies owed as a result of Contractor having to terminate other contracts necessarily and appropriately entered into by Contractor pursuant to this Contract. In no event shall the State Entity be liable to the Contractor for compensation for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State Entity’s exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State Entity for any damages or claims arising under this Contract.

13. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, this Contract may be terminated in whole or in part at the sole discretion of the State Entity, if the State Entity reasonably determines that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects the State Entity’s ability to pay under this Contract. A change of available funds as used in this paragraph includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.

If a written notice is delivered under this section, the State Entity will reimburse Contractor for the Services properly ordered until the effective date of said notice. The State Entity will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.

14. **SUSPENSION OF WORK:** Should circumstances arise which would cause the State Entity to suspend Contractor’s responsibilities under this Contract, but not terminate this Contract, this will be done by written notice. Contractor’s responsibilities may be reinstated upon advance formal written notice from the State Entity.

15. **SALES TAX EXEMPTION:** The Services under this Contract will be paid for from the State Entity’s funds and used in the exercise of the State Entity’s essential functions as a State of Utah entity. Upon request, the State Entity will provide Contractor with its sales tax exemption number. It is Contractor’s responsibility to request the State Entity’s sales tax exemption number. It also is Contractor’s sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Contract.

16. **CONTRACTOR’S INSURANCE RESPONSIBILITY**. The Contractor shall maintain the following insurance coverage:

1. Workers’ compensation insurance during the term of this Contract for all its employees and any Subcontractor employees related to this Contract. Workers’ compensation insurance shall cover full liability under the workers’ compensation laws of the jurisdiction in which the work is performed at the statutory limits required by said jurisdiction.
2. Commercial general liability [CGL] insurance from an insurance company authorized to do business in the State of Utah. The limits of the CGL insurance policy will be no less than one million dollars ($1,000,000.00) per person per occurrence and three million dollars ($3,000,000.00) aggregate.
3. Commercial automobile liability [CAL] insurance from an insurance company authorized to do business in the State of Utah. The CAL insurance policy must cover bodily injury and property damage liability and be applicable to all vehicles used in your performance of Services under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be $1 million per occurrence, combined single limit. The CAL insurance policy is required if Contractor will use a vehicle in the performance of this Contract.
4. Other insurance policies required in the Solicitation.

Certificate of Insurance, showing up-to-date coverage, shall be on file with the State Entity before the Contract may commence.

The State reserves the right to require higher or lower insurance limits where warranted. Failure to provide proof of insurance as required will be deemed a material breach of this Contract. Contractor’s failure to maintain this insurance requirement for the term of this Contract will be grounds for immediate termination of this Contract.

17. **RESERVED**.

18. **PUBLIC INFORMATION:** Contractor agrees that this Contract, related purchase orders, related pricing documents, and invoices will be public documents and may be available for public and private distribution in accordance with the State of Utah’s Government Records Access and Management Act (GRAMA). Contractor gives the State Entity and the State of Utah express permission to make copies of this Contract, related sales orders, related pricing documents, and invoices in accordance with GRAMA. Except for sections identified in writing by Contractor and expressly approved by the State of Utah Division of Purchasing and General Services, Contractor also agrees that the Contractor’s Proposal to the Solicitation will be a public document, and copies may be given to the public as permitted under GRAMA. The State Entity and the State of Utah are not obligated to inform Contractor of any GRAMA requests for disclosure of this Contract, related purchase orders, related pricing documents, or invoices.

19. **DELIVERY:** All deliveries under this Contract will be F.O.B. destination with all transportation and handling charges paid for by Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State Entity, except as to latent defects or fraud. Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract.

20. **ACCEPTANCE AND REJECTION:** The State Entity shall have thirty (30) days after the performance of the Services to perform an inspection of the Services to determine whether the Services conform to the standards specified in the Solicitation and this Contract prior to acceptance of the Services by the State Entity.

If Contractor delivers nonconforming Services, the State Entity may, at its option and at Contractor’s expense: (i) return the Services for a full refund; (ii) require Contractor to promptly correct or reperform the nonconforming Services subject to the terms of this Contract; or (iii) obtain replacement Services from another source, subject to Contractor being responsible for any cover costs.

21. **INVOICING:** Contractor will submit invoices within thirty (30) days of Contractor’s performance of the Services to the State Entity. The contract number shall be listed on all invoices, freight tickets, and correspondencerelating to this Contract. The prices paid by the State Entity will be those prices listed in this Contract, unless Contractor offers a prompt payment discount within its Proposal or on its invoice. The State Entity has the right to adjust or return any invoice reflecting incorrect pricing.

22. **PAYMENT:** Payments are to be made within thirty (30) days after a correct invoice is received. All payments to Contractor will be remitted by mail, electronic funds transfer, or the State of Utah’s Purchasing Card (major credit card). If payment has not been made after sixty (60) days from the date a correct invoice is received by the State Entity, then interest may be added by Contractor as prescribed in the Utah Prompt Payment Act. The acceptance by Contractor of final payment, without a written protest filed with the State Entity within ten (10) business days of receipt of final payment, shall release the State Entity and the State of Utah from all claims and all liability to the Contractor. The State Entity’s payment for the Services shall not be deemed an acceptance of the Services and is without prejudice to any and all claims that the State Entity or the State of Utah may have against Contractor. The State of Utah and the State Entity will not allow the Contractor to charge end users electronic payment fees of any kind.

23. **TIME IS OF THE ESSENCE:** The Services shall be completed by any applicable deadline stated in this Contract. For all Services, time is of the essence. Contractor shall be liable for all reasonable damages to the State Entity, the State of Utah, and anyone for whom the State of Utah may be liable as a result of Contractor’s failure to timely perform the Services required under this Contract.

24. **CHANGES IN SCOPE:** Any changes in the scope of the Services to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of Services.

25. **PERFORMANCE EVALUATION:** The State Entity may conduct a performance evaluation of Contractor’s Services, including Contractor’s Subcontractors. Results of any evaluation may be made available to Contractor upon request.

26. **STANDARD OF CARE:** The Services of Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the Services that are the subject of this Contract. Contractor shall be liable to the State Entity and the State of Utah for claims, liabilities, additional burdens, penalties, damages, or third party claims (e.g., another Contractor’s claim against the State of Utah), to the extent caused by wrongful acts, errors, or omissions that do not meet this standard of care.

27. **REVIEWS:** The State Entity reserves the right to perform plan checks, plan reviews, other reviews, and/or comment upon the Services of Contractor. Such reviews do not waive the requirement of Contractor to meet all of the terms and conditions of this Contract.

28. **ASSIGNMENT:** Contractor may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Contract, in whole or in part, without the prior written approval of the State Entity.

29. **REMEDIES:** Any of the following events will constitute cause for the State Entity to declare Contractor in default of this Contract: (i) Contractor’s non-performance of its contractual requirements and obligations under this Contract; or (ii) Contractor’s material breach of any term or condition of this Contract. The State Entity may issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains after Contractor has been provided the opportunity to cure, the State Entity may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Contract; (iii) impose liquidated damages, if liquidated damages are listed in this Contract; (iv) debar/suspend Contractor from receiving future contracts from the State Entity or the State of Utah; or (v) demand a full refund of any payment that the State Entity has made to Contractor under this Contract for Services that do not conform to this Contract.

30. **FORCE MAJEURE:** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that party's reasonable control. The State Entity may terminate this Contract after determining such delay will prevent successful performance of this Contract.

31. **CONFIDENTIALITY:** If Confidential Information is disclosed to Contractor, Contractor shall: (i) advise its agents, officers, employees, partners, and Subcontractors of the obligations set forth in this Contract; (ii) keep all Confidential Information strictly confidential; and (iii) not disclose any Confidential Information received by it to any third parties. Contractor will promptly notify the State Entity of any potential or actual misuse or misappropriation of Confidential Information.

Contractor shall be responsible for any breach of this duty of confidentiality, including any required remedies and/or notifications under applicable law. Contractor shall indemnify, hold harmless, and defend the State Entity and the State of Utah, including anyone for whom the State Entity or the State of Utah is liable, from claims related to a breach of this duty of confidentiality, including any notification requirements, by Contractor or anyone for whom the Contractor is liable.

Upon termination or expiration of this Contract, Contractor will return all copies of Confidential Information to the State Entity or certify, in writing, that the Confidential Information has been destroyed. This duty of confidentiality shall be ongoing and survive the termination or expiration of this Contract.

32. **PUBLICITY:** Contractor shall submit to the State Entity for written approval all advertising and publicity matters relating to this Contract. It is within the State Entity’s sole discretion whether to provide approval, which must be done in writing.

33. **CONTRACT INFORMATION:** Contractor shall provide information regarding job vacancies to the State of Utah Department of Workforce Services, which may be posted on the Department of Workforce Services website. Posted information shall include the name and contact information for job vacancies. This information shall be provided to the State of Utah Department of Workforce Services for the duration of this Contract. This requirement does not preclude Contractor from advertising job openings in other forums throughout the State of Utah.

34. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor will indemnify and hold the State Entity and the State of Utah harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs in any action or claim brought against the State Entity or the State of Utah for infringement of a third party’s copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of Contractor’s liability, such limitations of liability will not apply to this section.

35. **OWNERSHIP IN CUSTOM DELIVERABLES**: In the event that Contractor provides Custom Deliverables to the State Entity, pursuant to this Contract, Contractor grants the ownership in Custom Deliverables, which have been developed and delivered by Contractor exclusively for the State Entity and are specifically within the framework of fulfilling Contractor’s contractual obligations under this contract. Custom Deliverables shall be deemed work made for hire, such that all intellectual property rights, title and interest in the Custom Deliverables shall pass to the State Entity, to the extent that the Custom Deliverables are not recognized as work made for hire, Contractor hereby assigns to the State Entity any and all copyrights in and to the Custom Deliverables, subject to the following:

1. Contractor has received payment for the Custom Deliverables,

2. Each party will retain all rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and any other form of protection afforded by law to inventions, models, designs, technical information, and applications (“Intellectual Property Rights”) that it owned or controlled prior to the effective date of this contract or that it develops or acquires from activities independent of the services performed under this contract (“Background IP”), and

3. Contractor will retain all right, title, and interest in and to all Intellectual Property Rights in or related to the services, or tangible components thereof, including but not limited to (a) all know-how, intellectual property, methodologies, processes, technologies, algorithms, software, or development tools used in performing the Services (collectively, the “Utilities”), and (b) such ideas, concepts, know-how, processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates, or output which are supplied or otherwise used by or on behalf of Contractor in the course of performing the Services or creating the Custom Deliverables, other than portions that specifically incorporate proprietary or Confidential Information or Custom Deliverables of the State Entity (collectively, the “Residual IP”), even if embedded in the Custom Deliverables.

4. Custom Deliverables, not including Contractor’s Intellectual Property Rights, Background IP, and Residual IP, may not be marketed or distributed without written approval by the State Entity.

Contractor agrees to grant to the State Entity a perpetual, irrevocable, royalty-free license to use Contractor’s Background IP, Utilities, and Residual IP, as defined above, solely for the State Entity and the State of Utah to use the Custom Deliverables. The State Entity reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for the State Entity’s and the State of Utah’s internal purposes, such Custom Deliverables. For the Goods delivered that consist of Contractor’s scripts and code and are not considered Custom Deliverables or Work Product, for any reason whatsoever, Contractor grants the State Entity a non-exclusive, non-transferable, irrevocable, perpetual right to use, copy, and create derivative works from such, without the right to sublicense, for the State Entity’s and the State of Utah’s internal business operation under this Contract. The State Entity and the State of Utah may not participate in the transfer or sale of, create derivative works from, or in any way exploit Contractor’s Intellectual Property Rights, in whole or in part.

36. **OWNERSHIP IN INTELLECTUAL PROPERTY:** The State Entity and Contractor agree that each has no right, title, interest, proprietary or otherwise in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. All deliverables, documents, records, programs, data, articles, memoranda, and other materials not developed or licensed by Contractor prior to the execution of this Contract, but specifically created or manufactured under this Contract shall be considered work made for hire, and Contractor shall transfer any ownership claim to the State Entity.

37. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.

38. **ATTORNEY’S FEES:** In the event of any judicial action to enforce rights under this Contract, the prevailing party shall be entitled its costs and expenses, including reasonable attorney’s fees incurred in connection with such action.

39. **PROCUREMENT ETHICS**: Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or to any person in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.

40. **DISPUTE RESOLUTION:** Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute. The State Entity, after consultation with the Contractor, may appoint an expert or panel of experts to assist in the resolution of a dispute. If the State Entity appoints such an expert or panel, State Entity and Contractor agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.

41. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Contract, the order of precedence shall be: (i) this Attachment 1; (ii) Contract Signature Page(s); (iii) the State of Utah’s additional terms and conditions, if any; (iv) any other attachment listed on the Contract Signature Page(s); and (v) Contractor’s terms and conditions that are attached to this Contract, if any. Any provision attempting to limit the liability of Contractor or limit the rights of the State Entity or the State of Utah must be in writing and attached to this Contract or it is rendered null and void.

42. **SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not extinguish or prejudice the State Entity’s right to enforce this Contract with respect to any default or defect in the Services that has not been cured.

43. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Contract shall not affect the validity or enforceability of any other provision, term, or condition of this Contract, which shall remain in full force and effect.

44. **ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.

45. **ANTI-BOYCOTT ISRAEL**: In accordance with Utah Statute 63G-27-101, Contractor certifies that it is not currently engaged in a boycott of the State of Israel and agrees not to engage in a boycott of the State of Israel for the duration of the contract.

(Revision Date: 15 April 2021)

**ATTACHMENT 2**

1. The Law Firm shall observe the following when performing the scope of services stated in paragraph 1 of the Agreement:
   1. The Law Firm shall keep the OAG reasonably informed as to planned work tasks and legal support activities recommended by the Law Firm.
   2. The Law Firm shall provide clear communications to the OAG concerning the Law Firm’s planned, pending, and completed work.
   3. Each quarter the Law Firm shall provide to the OAG an estimate of potential fees, allowable costs, and major work tasks for the coming quarter; a listing of work tasks and the fees and allowable costs expended for them from the previous quarter; and any follow up information that may be requested.
   4. The Law Firm shall manage its resources to provide the most suitable expertise for the task at hand and shall help the OAG obtain effective services at a reasonable price for those services consistent with the terms of this Agreement; management approaches will take into account the needs of the work; needs within the firm to ensure that services are provided smoothly; and the State of Utah’s needs to reduce costs and avoid unnecessary work.
   5. The Law Firm shall maintain professional liability insurance of no less than $5,000,000 million per incident that is otherwise adequate to provide for the obligations stated in this Agreement.
   6. This Agreement is subject to all applicable law, including, but not limited to, Utah Administrative Rule R105-1.
   7. This Agreement was procured pursuant to the State of Utah’s Request for Proposals No. SK22-24 (the “RFP”). The proposal and other responses that the Law Firm submitted in connection with the RFP are hereby incorporated into and made a part of this Agreement.
2. The Law Firm’s monthly invoices shall include the following:
   1. The Law Firm’s monthly invoices shall state descriptions of hours worked and fees billed in the Law Firm’s standard billing format using the rates, and limited to the people, set forth below. Invoices will provide a detailed account of time spent without “block billing.”
   2. The OAG may set budget amounts that apply to periods of time or work milestones, and the Law Firm shall not exceed such budget amounts without the written consent of the OAG. If the Law Firm seeks a budget increase, the Law Firm shall submit to the OAG a written request for such increase and shall include a justification for the requested increase.
   3. In each monthly invoice, the Law Firm shall provide the following: totals for individual tasks (if billing for more than one task); totals for the statement as a whole; totals for each attorney and staff member who bills time that month; and the cumulative total of all amounts that the State has paid to the Law Firm from the date of this Agreement to the invoice date.
   4. The Law Firm shall not be paid for any costs of travel, lodging, food, or beverage without first obtaining the OAG’s prior written approval (except in cases of emergency to protect the client’s best interests), and the Law Firm shall not be paid for the cost of luxury or other excessively expensive rates for airlines, hotels, meals, or other such expenses.
   5. The hourly rates that the Law Firm identified in Exhibit “B” of the RFP include all charges except for fees and costs that are imposed by a court. If the Law Firm desires to include separate charges in its invoices for any services or products in connection with this Agreement (such as travel, electronic research costs, the cost of runners, postage charges, costs for copies or faxes, costs to print and bind briefs, etc.), the Law Firm shall first obtain the OAG’s prior written approval to include them before billing them.
3. The following individuals and addresses are the notice contacts for matters arising under this Agreement (except as otherwise noted in this Agreement). Notices given hereunder are effective upon receipt when delivered by overnight carrier or by email with confirmation of receipt, or three days after deposit in the U.S. mail.

OAG:

Law Firm:

**Exhibit “B”**

*Proposal Solicitation # SK22-24*

**COST PROPOSAL FORM**

Offeror Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_/\_\_\_/2021

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| **NAME** | **ROLE** | **HOURLY RATE** |
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By (Signature): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name and Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Exhibit “C”**

*Proposal Solicitation # SK22-24*

**COVER SHEET FORM**

Offeror’s Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_/\_\_\_/2021

**[Note: The Offeror Name should be a short name that uniquely identifies the Offeror. For example, the name of the lead law firm. Communication concerning the Proposal will reference the Offeror’s name.]**

Lead Counsel: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Firm: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_\_\_\_\_

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Phone: \_\_\_\_\_\_-\_\_\_\_\_\_-\_\_\_\_\_\_\_\_\_\_

**Litigation Team**:

Lead Counsel: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Senior Attorneys: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Junior Attorneys: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Paralegals: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Designated RFP Contact** for the Active Litigation Team:

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Firm: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_\_\_\_\_

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Phone: \_\_\_\_\_\_-\_\_\_\_\_\_-\_\_\_\_\_\_\_\_\_\_

**CERTIFICATION**

The Offeror hereby certifies that it meets all mandatory minimum qualifications and requirements set forth in Section 2.1 of the RFP. The individual signing below hereby attests that he or she has authority to make this certification on behalf of the Offeror and all law firms and individuals who comprise the Offeror.

By (Signature): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name and Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Exhibit “D”**

*Proposal Solicitation # SK22-24*

**CLAIM OF BUSINESS CONFIDENTIALITY**

Pursuant to Utah Code Annotated, Subsections 63G-2-305(1) and (2), and in accordance with Section 63G-2-309, the undersigned, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, asserts a claim of business confidentiality to protect the following information submitted as part of a Request for Proposals.

This claim is asserted because this information requires protection as it includes:

\_\_\_\_\_ trade secrets as defined in Utah Code Annotated Section 13-24-2 (“Trade secret” means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy).

\_\_\_\_\_ commercial information or non-individual financial information obtained from a person if: (a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future; [and] (b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access.

This statement of reasons supporting the claim of business confidentiality applies to the following information in this proposal:

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| --- | --- | --- |
| Page | Paragraph | Reason |
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Please use additional sheets if needed.

You will be notified if a record claimed to be protected herein under Utah Code Annotated § 63G-2-305(1) or (2) is classified public or if the governmental entity determines that the record should be released after weighing interests under Utah Code Annotated § 63G-2-201(5)(b) or Utah Code Annotated § 63G-2-401(6). See Utah Code Annotated § 63G-2-309.

Signed: Date:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name and Title