



**City of Albuquerque**  
**Services for Oversight of Albuquerque Police Department**  
**External Force Investigation Team**  
**Request for Letters of Interest**  
**Closing Date: March 31, 2021 at 4:00 pm MT**

The City of Albuquerque (City), through the Albuquerque Police Department (APD) is requesting Letters of Interest (RFLI) from business entities for services to serve as the Administrator of an External Force Investigation Team to assist the Albuquerque Police Department conducting investigations of uses of force.

**Scope of Services:**

**Introduction:**

In 2014, the City and the United States Department of Justice (DOJ) entered into a Court-Approved Settlement Agreement (CASA) regarding the Albuquerque Police Department in the case *United States v. City of Albuquerque*, Case No. 1:14-cv-1025, filed in the United States District Court for the District of New Mexico. The CASA followed DOJ's findings that there was reasonable cause to believe that APD officers were engaged in a pattern or practice of using excessive force, including deadly force.

As part of the ongoing litigation, the City and DOJ recently agreed to a court order that requires the City to establish an External Force Investigation Team (EFIT) to guide and direct IA force personnel, and when necessary, conduct investigations of Level 2 and Level 3 uses of force; provide written assessments of IA investigations carried out by IA force personnel; and provide written feedback on IA force personnel's work product.

The City is seeking through this RFLI candidates to serve as the Administrator of the EFIT (EFIT Administrator). Refer to the Scope of Services, Exhibit A, attached and the Stipulated Order, Attachment B to Exhibit A, for additional explanation. Please also refer to the Independent Monitor's Reports and additional documents available at: <http://www.cabq.gov/police/documents-related-to-apds-settlement-agreement>

**Response Requirements:**

1. The Offeror shall demonstrate experience and expertise in investigations of law enforcement misconduct, the constitutional standards for police officers' use of force, and systems reform

litigation. The Offeror shall not have any current or previous employment relationship or contract for services with APD or the City.

2. In selecting the EFIT Administrator, the City will consider the following qualifications:
  - a) experience managing an internal affairs department (or equivalent) within a police department under an injunction, consent decree, settlement agreement, structured institutional reform process, or oversight, and assisting in the success of the injunction, consent decree, settlement agreement, structured institutional reform process, or oversight;
  - b) experience overseeing or monitoring investigations into police use of force and/or misconduct contributing to the success of the consent decree or oversight;
  - c) a juris doctorate and experience in advising regarding standards of constitutional policing;
  - d) a doctorate or master's degree and experience as a Chief, Deputy Chief, Commander, or similar rank with a police department during a consent decree or police oversight, and contributing to the successful termination of the consent decree or oversight.
3. The Administrator will consider the following qualifications in identifying assistants and investigators:
  - a) qualifications listed in Section 2, above; or
  - b) greater than five years' demonstrated experience investigating police misconduct, assessing use of force incidents, and applying standards of constitutional policing;
4. Please provide your quote using the form at Exhibit C. Consider that in 2020, there were 629 level 2 and level 3 uses of force and approximately 100 misconduct cases. Please also refer to the Albuquerque Police Department Annual Use of Force Report 2016-2019, available at <http://www.cabq.gov/police/documents/2016-19-albuquerque-police-department-annual-use-of-force-report.pdf>, for further information. Alternative cost proposals using other methods may be submitted in addition to, but not instead of, the method in Exhibit C.

All costs should include any applicable gross receipts taxes. The Offeror should understand that the City will not pay for any amounts not included in the cost Proposal -- for example, insurance (please refer to Insurance requirements specified) or taxes -- and that liability for items not included remains with the Offeror.

#### **Draft Agreement**

The Offeror must indicate acknowledgement and agreement to adhere to the Draft Agreement, below, or note exceptions thereto.

#### PART 4 DRAFT AGREEMENT

THIS AGREEMENT is made and entered into as of the date of the last signature below by and between the City of Albuquerque, New Mexico, a municipal corporation (hereinafter referred to as the "City"), and \_\_\_\_\_ whose address is \_\_\_\_\_ (hereinafter referred to as the "Contractor").

#### RECITALS

WHEREAS, the City of Albuquerque Police Department requires an external force investigation team to assist in conducting investigations of Level 2 and Level 3 uses of force and associated potential misconduct by Albuquerque Police Department officers; and

WHEREAS, the Contractor has the experience necessary to provide the services; and

WHEREAS, the City desires to engage the Contractor to render certain services in connection therewith and the Contractor is willing to provide such services.

NOW THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

1. **Scope of Services.** The Contractor shall perform the services (“Services”) set forth in Exhibit A, attached hereto and incorporated herein, in a satisfactory and proper manner, as determined by the City.
2. **Time of Performance.** Services of the Contractor shall commence upon execution of this Agreement, and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this Agreement; provided, however, that in any event, all of the Services required hereunder shall be completed not later than May 1, 2022. If further services are required, the Agreement must be renewed or renegotiated.
3. **Compensation and Method of Payment.**
  - A. **Compensation.** For performing the Services specified in Section 1 hereof, the City agrees to pay the Contractor up to the amount of \_\_\_\_\_, which amount includes any applicable gross receipts taxes and which amount shall constitute full and complete compensation for the Contractor's Services under this Agreement, including all expenditures made and expenses incurred by the Contractor in performing the Services.
  - B. **Method of Payment.** Such amount shall be payable monthly at the rate set forth in Exhibit A, which rate includes any applicable gross receipt taxes. Payments shall be made to the Contractor monthly for completed Services upon receipt by the City of properly documented requisitions for payment as determined by the budgetary and fiscal guidelines of the City and on the condition that the Contractor has accomplished the Services to the satisfaction of the City.
  - C. **Appropriations.** Notwithstanding any provision in this Agreement to the contrary, the terms of this Agreement are contingent upon the City Council of the City of Albuquerque making the appropriations necessary for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement may be terminated at the end of the City's then current Fiscal Year upon written notice given by the City to the Contractor. Such event shall not constitute an event of default. All payment obligations of the City and all of its interest in this Agreement will cease upon the date of termination. The City's decision as to whether sufficient appropriations are available shall be accepted by Contractor and shall be final.
4. **Independent Contractor.** Neither the Contractor nor its employees are considered to be employees of the City of Albuquerque for any purpose whatsoever. The Contractor is considered as an

independent contractor at all times in the performance of the Services described in Section 1. The Contractor further agrees that neither it nor its employees are entitled to any benefits from the City under the provisions of the Workers' Compensation Act of the State of New Mexico, or to any of the benefits granted to employees of the City under the provisions of the Merit System Ordinance as now enacted or hereafter amended.

5. Personnel.

A. The Contractor represents that it has, or will secure at its own expense, all personnel required in performing all of the Services required under this Agreement. Such personnel shall not be current or former employees of or have any current or previous contractual relationships with the City.

B. All the Services required hereunder will be performed by the Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such Services.

C. None of the work or the Services covered by this Agreement shall be subcontracted without the prior written approval of the City. Any work or Services subcontracted hereunder shall be specified by written contract or Agreement and shall be subject to each provision of this Agreement.

6. Indemnity. The Contractor agrees to defend, indemnify, and hold harmless the City and its officials, agents, and employees from and against any and all claims, actions, suits, or proceedings of any kind brought against said parties because of any injury or damage received or sustained by any person, persons or property arising out of or resulting from the Services performed by the Contractor under this Agreement or by reason of any asserted act or omission, neglect or misconduct of the Contractor or Contractor's agents or employees or any subcontractor or its agents or employees. The indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement.

7. Liability. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1 et seq., NMSA 1978, as amended.

8. Insurance. The Contractor shall procure and maintain at its expense until final payment by the City for Services covered by this Agreement, insurance in the kinds and amounts hereinafter provided with insurance companies authorized to do business in the State of New Mexico, covering all operations under this Agreement, whether performed by it or its agents. Before commencing the Services and on the renewal of all coverages, the Contractor shall furnish to the City a certificate or certificates in form satisfactory to the City showing that it has complied with this Section. All certificates of insurance shall provide that thirty (30) days' written notice be given to the Risk Manager, Department of Finance and Administrative Services, City of Albuquerque, P.O. Box 470, Albuquerque, New Mexico 87103, before a policy is canceled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. With respect to all coverages required other than professional liability or workers' compensation, the City shall be named an additional insured. All coverages afforded shall be primary with respect to operations provided. Kinds and amounts of insurance required are as follows:

A. Commercial General Liability Insurance. A commercial general liability insurance policy with combined limits of liability for bodily injury or property damage as follows:

\$2,000,000 Per Occurrence

\$2,000,000 Policy Aggregate

\$1,000,000 Products Liability/Completed Operations  
\$1,000,000 Personal and Advertising Injury  
\$ 50,000 Fire - Legal  
\$ 5,000 Medical Payments

Said policy of insurance must include coverage for all operations performed for the City by the Contractor, and contractual liability coverage shall specifically insure the hold harmless provisions of this Agreement.

B. Automobile Liability Insurance. A Commercial Automobile Liability (CAL) Insurance policy with not less than a \$1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. The CAL policy must include coverage for the use of all owned, non-owned, and hired automobiles, vehicles and other equipment both on and off work. This CAL policy cannot be a personal automobile liability insurance policy as most personal automobile liability policies exclude coverage for work related losses.

C. Workers' Compensation Insurance. Workers' Compensation Insurance for its employees in accordance with the provisions of the Workers' Compensations Act of the State of New Mexico.

D. Professional Liability (Errors and Omissions) Insurance. Professional liability (errors and omissions) insurance in an amount not less than \$1,000,000 combined single limit of liability per occurrence with a general aggregate of \$1,000,000.

E. Cyber Liability Coverage. Cyber liability insurance in an amount not less than \$2,000,000 combined single limit of liability per occurrence with a general aggregate of \$2,000,000.

F. Increased Limits. If, during the term of this Agreement, the City requires the Contractor to increase the maximum limits of any insurance required herein, an appropriate adjustment in the Contractor's compensation will be made.

9. Discrimination Prohibited. In performing the Services required hereunder, the Contractor shall not discriminate against any person on the basis of race, color, religion, gender, sexual preference, sexual orientation, national origin or ancestry, age, physical handicap, or disability as defined in the Americans With Disabilities Act of 1990, as now enacted or hereafter amended.

10. ADA Compliance. In performing the Services required hereunder, the Contractor agrees to meet all the requirements of the Americans With Disabilities Act of 1990, and all applicable rules and regulations (the 'ADA'), which are imposed directly on the Contractor or which would be imposed on the City as a public entity. The Contractor agrees to be responsible for knowing all applicable requirements of the ADA and to defend, indemnify, and hold harmless the City, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties as a result of any acts or omissions of the Contractor or its agents in violation of the ADA.

11. Conflict of Interest. No officer, agent, or employee of the City will participate in any decision relating to this Agreement which affects that person's financial interest, the financial interest of his or her spouse or minor child, or the financial interest of any business in which he or she has a direct or indirect financial interest.

12. Interest of Contractor. The Contractor agrees that it presently does not have, and shall acquire no direct or indirect interest which conflicts in any manner or degree with the performance of the terms of this Agreement. The Contractor will not employ any person who has any such conflict of interest to assist the Contractor in performing the Services.

13. No Collusion. The Contractor represents that this Agreement is entered into by the Contractor without collusion on the part of the Contractor with any person or firm, without fraud, and in good faith. The Contractor also represents that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the term of this Agreement, will be offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view towards securing this Agreement or for securing more favorable treatment with respect to making any determinations with respect to performing this Agreement.

14. Debarment, Suspension, Ineligibility and Exclusion Compliance. The Contractor certifies that it has not been debarred, suspended, or otherwise found ineligible to receive funds by any agency of the executive branch of the federal government, the State of New Mexico, any local public body of the State, or any state of the United States. The Contractor agrees that should any notice of debarment, suspension, ineligibility or exclusion be received by the Contractor, the Contractor will notify the City immediately.

15. Reports and Information. At such times and in such forms as the City may require, there shall be furnished to the City such statements, records, reports, data and information, as the City may request pertaining to matters covered by this Agreement. Unless otherwise authorized by the City, the Contractor will not release any information concerning the work product including any reports or other documents prepared pursuant to this Agreement until the final product is submitted to the City.

16. Open Meetings Requirements. Any nonprofit organization in the City which receives funds appropriated by the City, or which has as a member of its governing body an elected official, or appointed administrative official, as a representative of the City, is subject to the requirements of § 2-5-1 et seq., R.O.A. 1994, Public Interest Organizations. The Contractor agrees to comply with all such requirements, if applicable.

17. Public Records. The parties acknowledge that City is a government entity and subject to the New Mexico Inspection of Public Records Act (Sections 14-2-1 et seq., NMSA 1978). Notwithstanding anything contained herein to the contrary, City shall not be responsible to Contractor for any disclosure of Confidential Information pursuant to the Act or pursuant to the City of Albuquerque's public records act laws, rules, regulations, instructions or other legal requirement.

18. Establishment and Maintenance of Records. Records shall be maintained by the Contractor in accordance with applicable law and requirements prescribed by the City with respect to all matters covered by this Agreement. Except as otherwise authorized by the City, such records shall be maintained for a period of three (3) years after receipt of final payment under this Agreement.

17. Audits and Inspections. At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all of the Contractor's records with respect to all matters covered by this Agreement. The Contractor shall permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to

all matters covered by this Agreement. The Contractor understands and will comply with the City's Accountability in Government Ordinance, §2-10-1 et seq. and Inspector General Ordinance, §2-17-1 et seq. R.O.A. 1994, and also agrees to provide requested information and records and appear as a witness in hearings for the City's Board of Ethics and Campaign Practices pursuant to Article XII, Section 8 of the Albuquerque City Charter.

19. Ownership, Publication, Reproduction and Use of Material. No material produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. The City shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.

20. Compliance With Laws. In performing the Services required hereunder, the Contractor shall comply with all applicable laws, ordinances, and codes of the federal, state and local governments.

21. Changes. The City may, from time to time, request changes in the Services to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the City and the Contractor, shall be incorporated in written amendments to this Agreement.

22. Assignability. The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement (whether by assignment or novation), without the prior written consent of the City thereto.

23. Termination for Cause. If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date thereof at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, maps, studies, surveys, drawings, models, photographs and reports prepared by the Contractor under this Agreement shall, at the option of the City, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Contractor, and the City may withhold any payments to the Contractor for the purposes of set-off until such time as the exact amount of damages due the City from the Contractor is determined.

Cause for termination includes but is not limited to:

- A. A determination by the Independent Monitor based on the orientation or initial assessments that the EFIT Administrator's quality of work has not met the requirements of the CASA;
- B. A determination by the Independent Monitor that the EFIT regularly fails to conduct thorough and objective investigations consistent with CASA requirement and APD policy;
- C. A determination by the City that the continued services of the EFIT are not likely to result in operational compliance with the requirements of the CASA;
- D. A determination by the Judge in *United States v. City of Albuquerque* that the contract or the CASA can be terminated; or
- E. Any other failure to meet the requirements set forth in this agreement or the Stipulated Order.

24. Termination for Convenience of City. The City may terminate this Agreement at any time by giving at least fifteen (15) days' notice in writing to the Contractor. If the Contractor is terminated by the City as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the Services actually performed bear to the total Services of the Contractor covered by this Agreement, less payments of compensation previously made. If this Agreement is terminated due to the fault of the Contractor, the preceding Section hereof relative to termination shall apply.

25. Construction and Severability. If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.

26. Enforcement. The Contractor agrees to pay to the City all costs and expenses including reasonable attorney's fees incurred by the City in exercising any of its rights or remedies in connection with the enforcement of this Agreement.

27. Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

28. Applicable Law and Venue. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the laws, rules and regulations of the City of Albuquerque. The venue for actions arising out of this Agreement is Bernalillo County, New Mexico. This provision does not alter the jurisdiction of the Court in *United States v. City of Albuquerque*, 14-cv-1025. If the Court in *United States v. City of Albuquerque*, 14-cv-1025 has jurisdiction over a legal dispute, the complaining party shall first seek relief from the court in that matter.

29. Force Majeure. City shall not be liable for failure to perform its obligations under this Agreement due to causes beyond the control and without the fault or negligence of either party. Such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or federal government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless City shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit vendor to meet the required delivery scheduled. The rights and remedies of the City provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

30. Electronic Signatures. Authenticated electronic signatures are legally acceptable pursuant to Section 14-16-7 NMSA 1978. The parties agree that this agreement may be electronically signed and that the electronic signatures appearing on the agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

31. Approval Required. This Agreement shall not become binding upon the City until approved by the highest approval authority of the City required under this Agreement.

**Submission of Response:**

All Letters of Interest shall be submitted in electronic copy to the contact person below by 4:00 pm MT on \_\_\_\_\_, 2021. Responses to this Request for Letters of Interest are voluntary. **The submitted information will be reviewed by the City and may be made available to the public. Submitted information will not be considered confidential. No proprietary, classified, confidential and/or sensitive information should be included in your response.** Those who respond are advised that the City is under no obligation to acknowledge receipt of your comments, or provide comments on your submission.

Contact Person:

Please direct inquiries and responses via electronic mail to:

Theresa Gonzales, DFAS Purchasing, Senior Administrative Assistant ([tagonzales@cabq.gov](mailto:tagonzales@cabq.gov))

SUBJECT: RESPONSE TO REQUEST FOR LETTERS OF INTEREST FOR SERVICES FOR OVERSIGHT OF ALBUQUERQUE POLICE DEPARTMENT EXTERNAL FORCE INVESTIGATION TEAM