

# REQUEST FOR PROPOSAL FOR CONSULTANT SERVICES

RFP No. UESP Management Consultant Services - 2016

Issued by:



**Utah Educational  
Savings Plan®**

**Issue Date: October 17, 2016**

**Due Date: October 27, 2016**

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## PART A OVERVIEW

### SECTION

#### 1.0 Purpose of RFP

##### 1.1 Definitions

As used in this RFP:

- A. "RFP" means this Request for Proposals to the Utah Educational Savings Plan (i.e., RFP UESP Management Consultant Services - 2016).
- B. "UESP" means the Utah Educational Savings Plan.

##### 1.2 Statement of Purpose

The Utah Educational Savings Plan (UESP) intends to enter into a contract with a qualified consultant to provide management consultant services as well as other professional services as requested by UESP. It is anticipated that this RFP will result in a contract award to a single contractor.

##### 1.3 UESP Background Information

UESP was established by the Utah State Legislature as a nonprofit, self-supporting agency that administers a public trust. The 529 plan offered by UESP (which is also referred to as "UESP") is designed to comply with Section 529 of the Internal Revenue Code of 1986, as amended. The Utah State Board of Regents and the Utah Higher Education Assistance Authority (UHEAA) administer and manage UESP. It is the official and only Section 529 plan sponsored by the State of Utah. For a complete description of plan details, see the UESP Program Description dated February 2, 2015 and Supplements thereto (the "Program Description"), which can be downloaded from the UESP website at [uesp.org](http://uesp.org).

#### 2.0 Informational Items

##### 2.1 Proposal Response Deliverables

Proposals must be concise, with pertinent supplemental information referenced and included as attachments. All proposals must be organized and labeled to comply with the following sections:

**Section A: Transmittal Letter.** Include an introduction of the respondent's name, address, telephone number, and e-mail address of the person to be contacted along with others who are authorized to represent the organization in dealing with this RFP. Any other information not contained in the proposal itself should also be included in the letter.

**Section B: Executive Summary.** Briefly describe the respondent's qualifications and ability to provide the services described in this RFP. Also indicate any requirements that cannot be met by the respondent.

**Section C: Detailed Discussion.** This section should constitute the major portion of the proposal and must contain a specific response to Part B of this RFP. Outline numbers should correspond, in order, to the section numbers contained in this RFP.

**Section D: Cost Proposal.** The respondent must submit a specific cost proposal in response to Part B, Section 2, of this RFP. This section will be evaluated independently of other criteria in the proposal.

**Section E: Additional Information.** Additional information and attachments, if any, may be submitted by the respondent. The respondent must describe why such additional information is included in the submission. UESP may choose not to include such information in its evaluation of the proposal.

Failure to provide a written response to items indicated in this RFP will be interpreted by UESP as an inability by the respondent to provide the requested product, service, or function. Responses should not be composed of a link to a vendor or partner website.

**2.2 Administrative Guidance**

The information provided in this RFP is intended to assist respondents in preparing proposals, but is not intended to limit a proposal's content or to exclude any relevant or essential data. Respondents are encouraged to expand upon the specifications to give additional evidence of their ability to provide the services requested in this RFP.

**2.3 Issuing Office and RFP Reference Code**

UESP is issuing this RFP and all subsequent addenda relating to it. The reference code is "RFP No. UESP Management Consultant Services – 2016." This code must be referenced on all proposals, correspondence, and documentation relating to the RFP.

NOTICE: Whenever the terms "bid", "bidder", "bidding," or "quote" appear in this RFP, or reference is made to a bid, bidder, bidding, or quote, the term or reference shall be interpreted to mean, as applicable, offeror, as defined in Utah Code Ann. Section 63G-6a-103(7) and Section 63G-6a-103(55), or Request for Proposals, as defined in Utah Code Ann. Section 63G-6a-103(38). The procurement shall be conducted subject to the provisions of Utah Code Ann. Sections 63G-6a-701 through 711.

**2.4 Submitting a Proposal**

NOTICE: By submitting a proposal in response to this RFP, respondent is acknowledging that the requirements, scope of work, and the evaluation process, outlined in the RFP are fair, equitable, not unduly restrictive, understood and agreed to. Any exceptions to the content of the RFP must be protested to the purchasing agent prior to the closing date and time for submission of the proposal. Proposals must be received by the posted due date and time. Proposals received after the deadline will be late and ineligible for consideration.

Proposals will only be accepted electronically. No hard copies will be accepted. Submit your proposal via e-mail to:

**rfp@uesp.org**

Proposals must be received by the posted due date and time. Proposals received after the deadline will be late and ineligible for consideration.

Cost will be evaluated independently from the technical proposal, and, for that reason, must be submitted separately from the technical proposal. Failure to submit cost separately may result in a proposal being determined to be non-responsive. Inclusion of any cost or pricing data within the technical proposal may also result in a proposal being determined to be non-responsive.

The Proposal Due Date for all submissions is no later than **Thursday, October 27, 2016, at 3:00 p.m., Mountain Time.**

PLEASE NOTE: Proposals must be received by the Proposal Due Date. Proposals received after the deadline will be late and ineligible for consideration.

**2.5 Timeline**

The following timeline (subject to change by addendum) will be followed with respect to this RFP and the resulting contract:

Item	Date
Request for Proposal Issued	October 17, 2016
Proposals Due	October 27, 2016, 3:00 p.m., Mountain Time
Notice of Winning Bid	On or before November 3, 2016
Contract Execution	On or before November 17, 2016

**2.6 Questions**

Any questions arising subsequent to the issuance of this RFP must be submitted via e-mail to:

rfp@uesp.org.

**2.7 Evaluation of Proposals**

An evaluation committee will review all proposals received as described in Part C of this RFP. UESP may evaluate proposals received without oral presentations by respondents. Accordingly, each written proposal should be submitted with the most favorable rate and information available.

**2.8 Award of the Contract**

Upon completion of the evaluation process, UESP may award a contract to the respondent whose proposal is determined to be most advantageous to UESP and its account owners.

**2.9 Restrictions on Publicity**

The successful respondent may not, without the prior written approval of UESP, do any of the following:

- A. Make any announcement regarding the award of the contract relating to this RFP.
- B. Refer to UESP, or use any data, pictures, or other representation of UESP, in its advertising, marketing, or other promotional efforts.

News releases pertaining to the RFP, any proposal, or the contract will be made only by UESP.

**2.10 Incurring Costs**

UESP will not be liable for costs that respondents may incur in connection with the preparation, submission, or presentation of their proposals, including all travel, dining, lodging, and communication expenses. Proposals should be concise, straightforward, and prepared simply and economically. Expensive displays, bindings, or promotional materials are neither desired nor required. However, these instructions should not limit a proposal's content or exclude any relevant or essential data.

UESP will not be liable for any costs of the successful respondent relating to conducting contract negotiations, including drafting, research, legal review, preparation, attending meetings, travel, dining, lodging, and communication expenses.

**2.11 Addenda**

If it becomes necessary to revise this RFP completely or in part, an addendum will be issued as a formal, written addendum.

**2.12 Other Communications**

During the RFP process (from the date of issue through the date of contract award or other final decision), UESP will be the sole source of official information regarding this RFP. Changes to the RFP will be issued as a formal, written addendum. Any and all oral agreements or conversations are not binding on UESP. Signed, written agreements represent the only contractual obligations of UESP.

**2.13 Reservation of Rights**

The issuance of this RFP in no way constitutes a commitment by UESP to award a contract. UESP reserves the right to reject all proposals, to cancel this RFP at any time, or to issue a new RFP for the same or similar services. UESP may waive any informality or technicality in any proposal that would not serve the interest of UESP.

**2.14 Discussions and Best and Final Offers**

Discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award, followed by an opportunity, at UESP's sole discretion, to make best and final offers. However, respondents should submit their very best estimates with their initial written proposals since UESP is not obligated to request a best and final offer and proposals may be accepted without discussion.

**2.15 Protected Information**

Because UESP is exempt from the provisions of the Government Records Access and Management Act (GRAMA), neither proposals submitted to UESP nor UESP's contracts are public records. Accordingly,

except as is explained below, neither the names of those individuals or organizations responding to this RFP; the responses to this RFP, including material contained or submitted with the responses; nor the contract will be open for public inspection.

In accordance with the Procurement Code, Utah Code Ann. Section 63G-6a-2002(4), UESP shall keep, and make available to the public, a written record of the procurement, which record shall consist of (a) the name of the provider from whom the procurement is made; (b) a description of the procurement item; (c) the date of the procurement; and (d) the expenditure made for the procurement.

The contents of all responses to this RFP become the property of UESP and may be returned only at UESP's option.

**2.16 Research Regarding Respondent**

UESP reserves the right to conduct a background check of each person or entity that may assist in providing services under a response to this RFP to determine the person's fitness and qualifications to fulfill the requirements of this RFP. UESP may reject any response to this RFP that involves services from a person or entity that UESP determines is unfit or unqualified to fulfill the requirements of this RFP. Upon request by UESP, respondent shall obtain, at respondent's expense, a criminal background check from the Utah Department of Public Safety, Bureau of Criminal Investigation for the respondent, each officer of the respondent, and each person associated with the respondent who will perform the work described in this RFP. Respondent will provide UESP with the results of each criminal background check obtained at the request of UESP.

**2.17 Modifications to, or Withdrawal of a Proposal**

A respondent may modify or withdraw a proposal to this RFP at any time before the closing date and time of this RFP by providing UESP a written modification or written statement withdrawing the proposal.

**2.18 Outstanding Tax Lien**

By responding to this RFP, the respondent affirms that it does not have any outstanding tax liens issued by the Utah State Tax Commission.

## **PART B INFORMATION REQUIRED IN SUBMISSION OF A PROPOSAL**

### **SECTION**

#### **1.0 Respondent Information**

##### **1.1 Respondent Background and Organization**

Provide an overview of the respondent's organization, including the organizational structure, history, ownership structure, subsidiary or affiliate relationships, and any recent corporate-level changes.

- A. List the name, title, office address, telephone number, and e-mail address of the person(s) authorized to represent the respondent regarding the proposal(s) submitted in response to this RFP.
- B. Give the name, title, office address, telephone number, and e-mail address of the person authorized to a contract and receive and sign all formal notices and/or addendum regarding such contract. Note that amendments to any contract must be in writing and signed by both parties.

##### **1.2 Respondent Qualifications**

UESP expects the selected respondent to meet the minimum qualifications listed below:

- A. Management consulting experience on behalf of public or private entities for a minimum of five (5) years;
- B. Types of services and consulting provided.

Provide the names of organizations served, dates of service and types of services and list the types of services provided.

##### **1.3 Services Provided and Experience**

UESP desires the respondent to provide general advice, counsel and recommendations to UESP management team and staff on a variety of matters. This includes business strategies and management consulting, business situation assessment and strategy formulations, improvement and redesign of business processes and workflow, integrating business process redesign with application development and data management initiatives.

- A. Describe how you would propose to provide these services. What ideas do you have for sharing your expertise to improve operations/efficiency of UESP?
- B. Will you commit to personally attend all required meetings and make presentations as needed? If a colleague is sent, who would that be and how will they be involved in providing services to UESP?

##### **1.4 Technical Capability**

Describe the technical abilities of your firm and its ability to provide professional reports and presentation.

##### **1.5 Key Personnel**

- A. Provide pertinent information regarding the respondent's key personnel. Key personnel includes: (1) the highest ranking individual who will be responsible for this engagement; (2) the authorized representative described in Part B, Section 1.2; and (3) each of the individuals who will be assigned to provide management consulting services to UESP. The information should include the title and responsibility, total years of experience, years with the organization, and their office location. Provide a professional resume for each individual.
- B. Advise UESP of the following for the respondent, respondent's firm, key personnel, and any partner, owner, officer, director, principal, management-level employee, related company (parent, subsidiary, sister), affiliate, or joint venture:

1. Have you been involved in any litigation currently pending or within the past five years that could be deemed substantive by UESP? (Examples include breach of fiduciary duty, malpractice, etc.)
2. Have you been convicted or pleaded no contest in a case stemming from a felony indictment? (If yes, any such conviction or plea must be disclosed and must be accompanied by a full explanation of the circumstances surrounding it.)
3. Are you or have you been a defendant in litigation relating to the management consulting services that you would provide to UESP? (If yes, any final settlement, administrative decision, or judgment made in connection with this litigation shall be disclosed and accompanied by a full explanation of the circumstances surrounding it.)
4. Are you or have you been involved in any enforcement action by the Securities and Exchange Commission or any other governmental regulatory agency or been named a defendant in litigation where there was an allegation of violation of fiduciary responsibility? (If yes, explain in detail.)
5. Have you ever been terminated for cause from any contract? (If yes, cite the background of the contract, reason for the termination, and what you have done to change operations or personnel to preclude the circumstances regarding the termination from re-occurring.)

C. Describe any conflicts of interest or problems, legal or otherwise, that could arise from a relationship with UESP.

#### **1.6 References**

Please provide at least three references that currently use the respondent's services, including name of the organization and a contact's name and title, telephone, and e-mail. UESP will contact references to evaluate their experiences with the respondent.

#### **2.0 Cost Proposal**

##### **2.1 Compensation and Billing**

Describe in detail the respondent's proposed fee structure, hourly rates, what out-of-pocket costs (including travel) will be reimbursed, and the billing method. UESP prefers to pay monthly on an hourly rate basis rather than having to have a prepaid retainer with the selected respondent. Consideration will be given to those respondents whose proposal uses an hourly rate that is paid monthly when evaluating this component of each respondent's proposal.

## PART C PROPOSAL EVALUATION

### SECTION

#### 1.0 Proposal Evaluation

#### 1.1 Evaluation Criteria

An evaluation committee will evaluate proposals against the following weighted criteria. Each area of the evaluation criteria must be addressed in detail in the proposal.

<b>Evaluation Criteria</b>	<b>Maximum Points</b>
<b>Respondent Background and Organization</b> (See Part B, Section 1.1)	15
<b>Respondent Qualifications:</b> (See Part B, Section 1.2)	25
<b>Services Provided and Experience:</b> (See Part B, Section 1.3)	40
<b>Technical Capability:</b> (See Part B, Section 1.4)	15
<b>Key Personnel</b> (See Part B, Section 1.5)	10
<b>References:</b> (See Part B, Section 1.6)	15
<b>Compensation and Billing:</b> (See Part B, Section 2.1)	30
<b>Total Points</b>	150

#### 1.2 Evaluation Process

In the initial phase of the proposal evaluation process, an evaluation committee will review all proposals received by the due date. First, non-responsive proposals (those not conforming to RFP requirements) will be eliminated. Second, the remaining proposals will be evaluated in a manner to eliminate from further consideration those proposals that fail to offer sufficient and substantive provisions to warrant further consideration. This includes proposals that do not achieve a minimum score of 40 out of 70 points possible (excluding the cost component of the Evaluation Criteria). Each respondent has sole responsibility for the items included or not included in the response it submits. Deviations from or exceptions to the terms and specifications contained within this RFP, if stipulated in respondent responses, while possibly necessary in the view of a particular respondent, may result in disqualification.

At the conclusion of this initial evaluation phase, finalist respondent proposals will be selected for a detailed review and evaluation, possibly including oral presentations. Each of these proposals will be evaluated according to the evaluation criteria set forth in the Evaluation Worksheet, a copy of which is attached to this RFP as Attachment B. At the conclusion of this second evaluation phase, a cost evaluation will be performed of the finalist respondent's cost proposals. The evaluation scores will then be combined with the cost scores to form a composite score.

UESP reserves the right to be the sole judge as to the overall acceptability of any proposal or to judge the individual merits of specific provisions within competing offers. UESP may exercise any of the rights reserved in Part A, Section 2.13, including the right not to award a contract to any respondent.

## **PART D CONTRACT ITEMS**

### **SECTION**

#### **1.0 Agreement**

The successful respondent will be required enter into a contract with UESP providing the scope of services, compensation, and an obligation to protect confidential information.

The anticipated contract term will be for a period of three years, with an option to renew for two additional periods of one year each at UESP's sole discretion. The anticipated effective date of the contract is on or before November 17, 2016.

#### **2.0 Standard Terms and Conditions**

The anticipated contract will be subject to the terms and conditions as set forth in Attachment A.

## ATTACHMENT A

### TERMS AND CONDITIONS FOR CONTRACT FOR INVESTMENT CONSULTANT SERVICES

1. **Authority.** Provisions of this Contract are pursuant to the authority set forth in Procurement Code, Utah Code Ann. Section 63G-6a, and related statutes that permit UESP to purchase certain specified services, and other approved purchases.
2. **Contract Jurisdiction, Choice of Law, and Venue.** The Contract shall be governed by and construed in accordance with the laws of the State of Utah without regard to any conflict of law principles that would result in the application of any law other than the law of the State of Utah. All disputes will be heard in the state or federal courts located in Salt Lake City, Utah.
3. **Laws and Regulations.** Contractor and any and all supplies, services, equipment, and construction furnished under this Contract will comply fully with all applicable Federal, State, and local laws, codes, rules, regulations, and ordinances, including applicable licensure and certification requirements.
4. **Records Administration.** Contractor shall maintain, or supervise the maintenance of, all records necessary to properly account for the payments made to Contractor for costs authorized by this Contract. These records shall be retained by Contractor for at least four years after the Contract terminates, or until all audits initiated within the four years have been completed, whichever is later. Contractor agrees to allow UESP, State and Federal auditors, and State Agency staff access to all the records to this Contract for audit, inspection, and monitoring of services. Such access will be during normal business hours or by appointment.
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. It does not apply to other types of procurement processes, including, but not limited to, Invitation for Bids or to Multiple Stage Bids.

#### 5.1 Status Verification System

1. Each offeror and each person signing on behalf of any offeror certifies as to its own entity, under penalty of perjury, that the named Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of the contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws including UCA Section 63G-12-302.
2. The Contractor shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with applicable immigration laws including UCA Section 63G-12-302 and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."
3. The State will not consider a proposal for award, nor will it make any award where there has not been compliance with this Section.
4. Manually or electronically signing the Proposal is deemed the Contractor's certification of compliance with all provisions of this employment status verification certification required by all applicable status verification laws including UCA Section 63G-12-302.

## 5.2 Indemnity Clause for Status Verification System

1. Contractor (includes, but is not limited to any Contractor, Design Professional, Designer or Consultant) shall protect, indemnify and hold harmless, the State and its officers, employees, agents, representatives and anyone that the State may be liable for, against any claim, damages or liability arising out of or resulting from violations of the above Status Verification System Section whether violated by employees, agents, or contractors of the following: (a) Contractor; (b) Subcontractor at any tier; and/or (c) any entity or person for whom the Contractor or Subcontractor may be liable.
  2. Notwithstanding Section 1. above, Design Professionals or Designers under direct contract with the State shall only be required to indemnify the State for a liability claim that arises out of the design professional's services, unless the liability claim arises from the Design Professional's negligent act, wrongful act, error or omission, or other liability imposed by law except that the design professional shall be required to indemnify the State in regard to subcontractors or sub-consultants at any tier that are under the direct or indirect control or responsibility of the Design Professional, and includes all independent contractors, agents, employees or anyone else for whom the Design Professional may be liable at any tier.
6. **Time Is of the Essence.** For all work and services under this Contract, time is of the essence and Contractor shall be liable for all damages to UESP, the State of Utah, and anyone for whom UESP and the State of Utah may be liable, as a result of the failure to timely complete the scope of work required under this Contract.
  7. **Payment.**
    - a. **Timing.** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. After 60 days from the date a correct invoice is received by the appropriate UESP official, Contractor may assess interest on overdue, undisputed account charges up to a maximum of the interest rate paid by the IRS on taxpayer refund claims, plus two percent, computed similarly as the requirements of Utah Code Ann. Section 15-6-3. The IRS interest rate is adjusted quarterly, and is applied on a per annum basis, on the invoice amount that is overdue. Unless otherwise stated in the Contract, all payments to Contractor will be remitted by mail or electronic funds transfer.
    - b. **Final Payment.** The acceptance by Contractor of final payment without a written protest filed with UESP within 10 working days of receipt of final payment shall release UESP from all claims and all liability to Contractor for fees and costs of the performance of the services pursuant to this Contract.
  8. **Prompt Payment Discount.** Contractor may quote a prompt payment discount based upon early payment. Contractor shall list Payment Discount Terms on invoices. The prompt payment discount will apply to payments made with purchasing cards and checks. The date from which discount time is calculated will be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date will be the date of acceptance of the merchandise.
  9. **Document Ownership.** Contractor agrees that any work/services and all Deliverables prepared for UESP, to the extent to which they are eligible under copyright law in any country, shall be deemed a work made for hire, such that all right, title, and interest in the work and Deliverables reside with UESP. To the extent any work or Deliverable is deemed not to be, for any reason whatsoever, work made for hire, Contractor agrees to assign and hereby assigns all right, title, and interest, including but not limited to, copyright, patent, trademark, and trade secret, to such work and Deliverables, and all extensions and renewals thereof, to UESP. Contractor further agrees to provide all assistance reasonably requested by UESP in the establishment, preservation, and enforcement of its rights in such work and Deliverables, or subsequent

amendments or modifications to such work and Deliverables, without any additional compensation to Contractor. Contractor agrees to waive, and hereby, to the extent permissible, waives, all rights relating to such work and Deliverables, or subsequent amendments or modifications to such work and Deliverables, including without limitation any and all rights of identification of authorship, and any and all rights of approval, restriction, or limitation on use.

10. **Conflict of Interest.** Contractor represents that none of its officers or employees are officers or employees of UESP, unless disclosure has been made in accordance with Utah Code Ann. Section 67-16-8. Contractor also represents that it has no conflict of interest in performing the services for UESP under this Contract, unless such conflict of interest has been disclosed to UESP and approval to proceed, notwithstanding the conflict, has been obtained from UESP in writing.
11. **Contractor Is an Independent Contractor.** Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind UESP to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for UESP, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to Contractor by UESP. Contractor shall be responsible for the payment of all income tax and Social Security amounts due as a result of payments received from UESP for these Contract services. Persons employed by UESP and acting under the direction of UESP shall not be deemed to be employees or agents of Contractor.
12. **Indemnity Clause.** Contractor agrees to indemnify, save harmless, and release UESP, the State of Utah, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this Contract which are caused in whole or in part by the acts or negligence of Contractor's officers, agents, volunteers, or employees, but not for claims arising from UESP's sole negligence. The parties agree that if there are any Limitations of Contractor's Liability, including a Limitation of Liability for anyone for whom Contractor is responsible, such Limitations of Liability will not apply to injuries to persons, including death, or to damages to property.
13. **Employment Practices Clause.** Contractor agrees to abide by the provisions of Titles VI and VII of the Civil Rights Act of 1964 (42 USC 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; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90, which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities. Also, Contractor agrees to abide by Utah's Executive Order, dated December 13, 2006, which prohibits sexual harassment in the workplace. Contractor also agrees to abide by any laws and policies of UESP and/or the State of Utah regarding any of the above mentioned prohibitions in this paragraph.
14. **Performance Evaluation.** UESP may conduct a performance evaluation of Contractor's services, including specific personnel of Contractor. References in the Contract to Contractor shall include Contractor, Contractor's subcontractors, or sub-consultants at any tier, if any. Results of any evaluation will be made available to Contractor.
15. **Waivers.** No waiver by UESP or Contractor of any default shall constitute a waiver of the same default at a later time or of a different default.
16. **Separability Clause.** A declaration by any court, or any other binding legal authority, that any provision of this Contract is illegal and void shall not affect the legality and enforceability of any other provision of this Contract, unless the provisions are mutually dependent.
17. **Renegotiation or Modifications.** This Contract may be amended, modified, or supplemented only by written amendment to this Contract, executed by authorized persons of the parties hereto, and attached to the original signed copy of this Contract. Automatic renewals will not apply to this Contract.
18. **Termination.**
  - a. **Notification.** Unless otherwise stated in these terms and conditions, if applicable, this Contract

may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given 10 working days after notification to correct and cease the violations, after which this Contract may be terminated for cause. This Contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 60 days prior written notice being given to the other party. On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.

- b. **Compensation.** In the event of such termination, Contractor shall be compensated for 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 UESP is limited to full payment for all work 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 contracts necessarily and appropriately entered into by Contractor pursuant to this Contract. Contractor further acknowledges that in the event of such termination, all work product, which includes but is not limited to all manuals, forms, contracts, schedules, reports, and any and all documents produced by Contractor under this Contract up to the date of termination are the property of UESP and shall be promptly delivered to UESP.
19. **Intentionally Authorized Respondent Representatives.** UESP reserves the right to require a change in the individual assigned to represent the respondent if the assigned representative is not serving the needs of UESP in an acceptable manner. This right shall carry forward through the response period and, with the successful respondent, during the term of contract.
20. **Intentionally Omitted.**
21. **Standard of Care.** The services of Contractor and its subcontractors and sub-consultants at any tier, if any, 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 UESP for claims, liabilities, additional burdens, penalties, damages, or third-party claims (i.e., another Contractor's claim against UESP), to the extent caused by wrongful acts, errors, or omissions that do not meet this standard of care.
22. **State Reviews and Limitations.** The right of UESP or the State to perform plan checks, plan reviews or other reviews and/or comment upon the services of Contractor, as well as any approval by UESP or the State, shall not be construed as relieving Contractor from its professional and legal responsibility for services required under this Contract. No review by UESP or the State or any entity/user, approval or acceptance, or payment for any of the services required under this Contract shall be construed to operate as a waiver by UESP or the State of any right under this Contract or of any cause of action arising out of the performance or nonperformance of this Contract, and Contractor shall be and remain liable to UESP or the State in accordance with applicable law for all damages to UESP or the State caused by the wrongful acts, errors, and/or omissions of Contractor or its subcontractors or sub-consultants at any tier, if any.
23. **Public Information.** Because UESP is exempt from the provisions of the Government Records Access and Management Act (GRAMA), neither proposals submitted to UESP nor UESPs contracts are public records. Accordingly, except as is explained below, the Contract will not be open for public inspection.

In accordance with the Procurement Code, Utah Code Ann. Section 63G-6a-2002(4), UESP shall keep, and make available to the public, a written record of the procurement, which record shall consist of:

- A. The name of the provider from whom the procurement is made;
- B. A description of the procurement item;

- C. The date of the procurement; and
  - D. The expenditure made for the procurement.
24. **Patents, Copyrights, Etc.** Contractor will release, indemnify and hold UESP, its officers, agents and employees harmless from liability of any kind or nature, including Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this Contract.
25. **Assignment/Subcontract.** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of UESP.
26. **Default and Remedies.**
- a. **Contract in Default.** Any of the following events will constitute cause for UESP to declare Contractor in default of this Contract:
    - (i) Nonperformance of contractual requirements; or
    - (ii) A material breach of any term or condition of this Contract.
  - b. **Notice of Default.** Should Contractor be in default under any of the provisions of this Contract, UESP will issue a written notice of default providing a 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, UESP may do one or more of the following:
    - (i) Exercise any remedy provided by law;
    - (ii) Terminate this Contract and any related contracts or portions thereof;
    - (iii) Impose liquidated damages, if liquidated damages are listed in the Contract; or
    - (iv) Suspend Contractor from receiving future solicitations.
27. **Force Majeure.** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, acts of God, and/or war, which is beyond that party's reasonable control. UESP may terminate this Contract after determining such delay or default will reasonably prevent successful performance of this Contract.
28. **Procurement Ethics.** Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to UESP or the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of UESP or the State, or who 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 (Utah Code Ann. Section 63G-6-2404).
29. **Conflict of Terms.** In order for any terms and conditions of Contractor to apply to this Contract, they must be in writing and attached to this Contract. No other terms and conditions of Contractor will apply to this Contract, including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the terms and conditions in the Contract, the order of precedence shall be:
- A. Attachment A: Terms and Conditions;

- B. Contract Signature Page(s);
  - C. Attachment B: UESP Request for Management Consultant Services (RFP No. UESP Management Consultant Services – 2016);
  - D. Attachment C: Contractor's Response to UESP's Request for Proposal No. UESP Management Consultant Services – 2016.
  - E. Terms and Conditions of Contractor, if any.
30. **Compliance.** Contractor agrees to abide with all applicable federal, state, county, and city laws and regulations and to be responsible for obtaining and/or possessing any and all permits and licenses that may be required.
31. **Regulatory Restrictions and Change of Ownership.** If a regulatory restriction is implemented that prohibits Contractor's ability to abide by a provision of the Contract, Contractor must notify UESP in writing within 30 calendar days. If, by the sole and reasonable determination of UESP, no alternative solution is available, UESP reserves the right to terminate the Contract.
- Contractor must notify UESP of any change of ownership by Contractor. UESP reserves the right to terminate the Contract if the nature of the ownership of Contractor changes subsequent to the Contract start date.
32. **Acceptance of Services Rendered.** UESP, through its designated agents and representatives, is the sole determining judge of whether services rendered under the Contract satisfy the requirements as identified in the Contract.
33. **Anti-Collusion Agreement.** Contractor represents and warrants that it has not divulged its proposal to, or colluded with, any other offer or party to a proposal.
34. **Management Reports.** Upon request, Contractor shall summarize and concisely report pertinent information to UESP in a timely manner throughout the duration of this Contract.
35. **Taxes—Contractor.** Contractor shall be responsible for and pay all taxes levied or incurred against Contractor in connection with the performance of any services under the Contract, including taxes levied or incurred against Contractor's income, inventory, property, sales, or other taxes.
36. **Taxes—UESP Exemption Status.** UESP is exempt from State of Utah sales and excise taxes. Exemption certification information appears on all purchase orders issued by UESP. Such taxes do not apply to UESP unless otherwise noted.
37. **Privacy.** Contractor shall follow these privacy practices:
- A. Respect the privacy of UESP account owners, successors, and beneficiaries by not sharing any data with any parties without the express prior written consent of UESP; and
  - B. Comply with the UESP Privacy Policy (Part 11 of the September 19, 2016, UESP Program Description), which can be downloaded from the UESP website at [uesp.org](http://uesp.org).
38. **Account.** The Contract is exclusive to Contractor. In the event the Contract is not renewed or is terminated, Contractor will expedite the transfer of UESP television commercials, artwork, and any other materials produced during the Contract to UESP.
39. **Confidentiality.** All data relating specifically to UESP's business, and other information identified as confidential by UESP, are confidential information of UESP. Contractor's proprietary software, tools, methodologies, techniques, ideas, discoveries, inventions, know-how and any other oral or written information identified as confidential by Contractor, are the confidential information of Contractor.

Contractor's confidential information includes Contractor's confidential information owned prior to date of this Agreement as well as confidential information developed during the course of this engagement. UESP's confidential information and Contractor's confidential information are collectively referred to as "Confidential Information." Each party shall use the Confidential Information of the other party only in furtherance of the purposes of this Contract and shall not disclose such Confidential Information to any third party without the other party's prior written consent. Each party agrees to take reasonable measures to protect the confidentiality of the other party's Confidential Information and to advise their employees of the confidential nature of the Confidential Information and of the prohibitions herein.

UESP's Confidential Information includes:

- information or material that is subject to privacy protections or disclosure restrictions under federal law, state law, or the policies and procedures of UESP;
- UESP financial information, system configuration, data, business information, concepts, business models, marketing plans, proposals, business plans (including processes, initiatives, and/or plan changes under development), financial data, investment information, investment option design, account owner and prospect lists, account owner information, personnel data, Agreement information, properties, methods of operation, software (including source code, specifications, data, works in process, alpha and beta versions, design documents, and documentation), trade secrets, inventions, discoveries, and know-how; and
- any information, which by the circumstances of disclosure or the nature of the information itself, should reasonably be understood to be confidential.

UESP's Confidential Information does not include any information that:

- was publicly known and made generally available in the public domain prior to the time of disclosure;
- becomes publicly known and made generally available after disclosure by UESP to Contractor through no action or inaction of Contractor;
- is already in the possession of Contractor at the time of disclosure by UESP as shown by Contractor's files and records;
- is obtained by Contractor from a third party without a breach of such third party's obligations of confidentiality;
- is independently developed by Contractor without use of or reference to UESP's Confidential Information, as shown by documents and other competent evidence in Contractor's possession; or
- is required by law to be disclosed by Contractor, provided that Contractor gives UESP prompt written notice of such requirement prior to such disclosure and assistance in obtaining an order protecting the information from public disclosure.

Notwithstanding anything to the contrary contained in this Contract, neither party shall be obligated to treat as confidential any information disclosed by the other party (the "Disclosing Party") which: (1) is rightfully known to the recipient prior to its disclosure by the Disclosing Party; (2) is released by the Disclosing Party to any other person or entity (including governmental agencies) without restriction; (3) is independently developed by the recipient without any reliance on Confidential Information; or (4) is or later becomes publicly available without violation of this Contract or may be lawfully obtained by a party from any nonparty. Notwithstanding the foregoing, either party will be entitled to disclose Confidential Information of the other to a third party as may be required by law, statute, rule or regulation, including any subpoena or other similar form of process, provided that (and without breaching any legal or regulatory requirement) the

party to which the request is made provides the other party with prompt written notice and allows the other party to seek a restraining order or other appropriate relief.

39. **Entire Contract.** This Contract, including all attachments and documents incorporated hereunder, and the related UESP solicitation documents, if any, constitutes the entire Contract between the parties with respect to the subject matter, and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written. The terms of this Contract shall supersede any additional or conflicting terms or provisions that may be set forth or printed on Contractor's work plans, cost estimate forms, receiving tickets, invoices, or any other related standard forms or documents of Contractor that may subsequently be used to implement, record, or invoice services hereunder from time to time, even if such standard forms or documents have been signed or initialed by a representative of UESP. The parties agree that the terms of this Contract shall prevail in any dispute between the terms of this Contract and the terms printed on any such standard forms or documents, and such standard forms or documents shall not be considered written amendments of this Contract.

**ATTACHMENT B | EVALUATION SCORE SHEET**

**RFP No. UESP Management Consultant Services - 2016**

Name of Respondent: \_\_\_\_\_

Evaluation Reviewer's Name: \_\_\_\_\_

Evaluation Criteria	Evaluator's Score (0-5)*	Weight	Points
<b>Respondent Background and Organization</b> A. Provided overview of organization (i.e., structure, history, ownership structure, subsidiary or affiliate relationships, recent corporate-level changes) B. List contact for this proposal <i>(See Part B, Section 1.1)</i> (15 Points Possible)		x 2   x 1	
<b>Respondent Qualifications:</b> A. Minimum 5 years experience B. Scope of professional services provided <i>(See part B, Section 1.2)</i> (25 Points Possible)		x 2  x 3	
<b>Services Provided and Experience:</b> A. Plan for providing services B. Commitment to attend meetings <i>(See Part B, Section 1.3)</i> (40 Points Possible)		x 6  x 2	
<b>Technical Capability:</b> A. Tools available for technical analysis B. Explained how technical tools will be used to benefit UESP <i>(See Part B, Section 1.4)</i> (15 points Possible)		x 1  x 2	
<b>Key Personnel:</b> A. Key personnel B. Disclosures <i>(See Part B, Section 1.5)</i> (10 points Possible)		x 1  x 1	
<b>References:</b> Provided 3 references of individuals/entities that currently use Respondent's services <i>(See Part B, Section 1.6)</i> (15 Points Possible)		x 3	
<b>Compensation and Billing:</b> (including proposed fee structure, hourly rates, billing method and any out-of-pocket and travel costs) <i>(See Part B, Section 2.1)</i> (30 Points Possible)		x 6	
Total Points (150 Points Possible)			

**Evaluator's Score will be assigned as follows:**

- |   |  |
|---|--|
| 0 = Failure, no response                        | 4 = Above average, exceeds minimum requirement |
| 1 = Poor, inadequate, fails to meet requirement | 5 = Superior                                   |
| 2 = Fair, only partially responsive             |  |
| 3 = Average, meets minimum requirement          |  |