REQUEST FOR PROPOSALS
ISSUED BY
THE STATE OF NEW MEXICO,
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT,
STATE PARKS DIVISION,
FOR
VETERINARY CARE
AT LIVING DESERT ZOO AND GARDENS STATE PARK

SECTION I. INTRODUCTION

The New Mexico Energy, Minerals and Natural Resources Department (EMNRD), State Parks Division (Division), is requesting proposals to provide veterinary care at Living Desert Zoo and Gardens State LDZGSP (LDZGSP) in Carlsbad, including 24-hour emergency care, pest and parasite control programs, vaccination programs and other disease control and prevention programs. EMNRD has approximately $80,000 available for the work of this Request for Proposals (RFP). Any procurement which may result from this RFP is valid for one year from date of issue as indicated in Section IX, Contact Person and Proposal Due Date, below.

SECTION II. BACKGROUND

LDZGSP is a state-operated zoo and botanical garden that maintains living collections of native Chihuahuan Desert wildlife under provisions of the U.S. Department of Agriculture (USDA) Animal Welfare Act, federal wildlife laws, and wildlife laws of the State of New Mexico, as well as professional goals and standards of the American Zoo and Aquarium Association (AZA). LDZGSP exhibits and provides veterinary care for a diverse collection of wildlife representing the classes of Mammalia, Aves, and Reptilia.

SECTION III. QUALIFICATIONS

The Division seeks a veterinary services contractor possessing all of the following qualifications:

- A State of New Mexico licensed veterinary service consisting of two or more persons, each of whom must possess a degree of Doctor of Veterinary Medicine or Veterinariae Medicinae Doctoris from a recognized and accredited veterinary college. Each must be accredited in the State of New Mexico and meet all applicable current veterinary licensing requirements from the State of New Mexico (mandatory).

- Veterinary training and a minimum of four years’ experience in providing continuing veterinary care for all major classes of vertebrates in a public zoological setting.

- Specific experience in the veterinary management of native wildlife including but not limited to wild/captive canids, felids, ursids, and mustelids, as well as experience in veterinary management of native/exotic hoofed-stock, birds of prey, passerines, and non-venomous and venomous reptiles.

- Previous zoo experience. Experience in the development of a written program of veterinary care and preventative medicine, including but not limited to internal
and external parasite control, routine fecal examination, physiological and behavioral observations, behavioral enrichment, and animal keeper/staff training.

- Experience in the training and development of animal keeper staff to make observations, use sound judgment, and report on the potential need for veterinary intervention. Staff training is a high priority of this criterion.

- Experience in the husbandry, breeding, and captive management of native birds, mammals, and reptiles, including veterinary care, safe handling, and management of venomous reptiles.

- Training and experience in principles and contemporary methods of animal restraint, including remote chemical immobilization. Experience with animal restraint equipment, specifically including the Telinject animal capture and restraint system.

- Ability to provide veterinary services on a scheduled basis, including a minimum of twice monthly on-site inspections, as well as provide 24-hour veterinary emergency services in accordance with AZA requirements and all provisions of the USDA Animal Welfare Act.

- Membership in AZA, American Association of Zoo Veterinarians, Association of Avian Veterinarians, Association of Reptile & Amphibian Veterinarians, Wildlife Disease Association (WDA), or American Veterinary Medical Association.

- Knowledge and experience in the veterinary needs for maintaining veterinary clinic facilities serving a diverse collection of zoo animals. Consultation and planning experience with governmental agencies responsible for maintenance and operation of public zoo veterinary clinic facilities.

- Specific knowledge of and experience with AZA Standards and Guidelines and provisions of the Animal Welfare Act and USDA Program of Veterinary Care.

Documents supporting the above qualifications must be submitted with proposal for consideration.

SECTION IV. SCOPE OF WORK

The successful Offeror shall perform the following work:

Provide veterinary care at LDZGSP, including routine inspections, routine tracking of cases, x-ray and surgical procedures, consultation and involvement in decision making process with zoo staff regarding nutrition, necropsies, risk assessment, sanitation, pest and parasite control programs, vaccination programs, other disease control and prevention programs, as well as provide emergency care. Specifically, the successful Offeror shall:

A. Conform to applicable animal welfare regulations, as established by the USDA, Animal and Plant Health Inspection Service and in accordance with the approved program of veterinary care. Establish, maintain, and supervise programs of disease control and prevention, pest and parasite control, pre-procedural and post-procedural care, nutrition,
necropsy, euthanasia, risk assessment, sanitation, and adequate veterinary care for all animals on the LDZGSP premises including, but not limited to:

1. Vaccinations:
   a. Carnivores: Mexican wolves, DHPP, Leptospirosis, Rabies - Annually. Gray Fox - DHPP, Rabies - Annually. Quarantine Carnivores - Vaccinations are updated as appropriate and as deemed necessary by the veterinarian.
   b. Hoofstock: No history of TB or Brucellosis has ever been indicated. Testing shall be upon opportunity: necropsy performed, and pathology database developed.
   c. Other vaccinations as successful Offeror deems necessary.

2. Surgical procedures as medically indicated.

3. Parasite Control Program:
   a. Ectoparasites (fleas, ticks, mites, lice, flies): Control as needed.
   b. Blood parasites: Mexican Wolf and Gray Fox will require testing annually for heartworm and providing monthly prevention as needed.
   c. Intestinal Parasites: Bi-annual fecal exams April or October, or as indicated by inspection.
   d. Hoofstock: Prophylactic de-worming every six months. Conduct fecal exams two weeks after de-worming.
   e. Walk-through aviary: Prophylactic de-worming monthly.

4. Emergency Care: Twenty-four hour emergency care, year-round.

5. Euthanasia: Provide sick, diseased, injured, or lame animals with veterinary care or euthanasia. Euthanasia shall be carried out by the successful Offeror or the park staff as successful Offeror trains or directs.

B. Physically visit the LDZGSP a minimum of two times per month to properly supervise veterinary care program, review animal husbandry standards and protocols regarding nutrition, necropsies, risk assessment, sanitation, and perform routine veterinary inspections including routine tracking of cases as well as participating in the decision making process regarding these items.
C. Conduct regular training for animal keepers and LDZGSP staff concerning veterinary procedures, nutrition, sanitation, risk assessment, necropsy and general animal husbandry protocols, preventative medicine, and animal restraint.

D. Prepare written reports and notes for records to be maintained at successful Offeror’s clinic and LDZGSP. Submit reports with invoices. Submit reports from outside laboratories to LDZGSP within two days of receipt. Respond, via fax, to verification of reports generated by LDZGSP within two days.

SECTION V. PROPOSAL FORMAT AND CONTENTS

Proposals must contain sufficient information to provide EMNRD with a thorough description of Offeror’s qualifications to accomplish the activities described in the Scope of Work. All proposals shall be on white 8.5 x 11” paper, in single-spaced, 12-point type. The proposal MUST contain, at a minimum, all listed items in the sequence indicated and be organized in the following format.

A. A cover letter that:

- identifies the name, title, telephone and fax numbers, and e-mail address of the person authorized to negotiate the contract on behalf of the Offeror;
- identifies the names, titles, telephone and fax numbers, and e-mail addresses of persons to be contacted for clarification;
- explicitly indicate acceptance of the terms and conditions of this RFP and its evaluation factors;
- certifies all entities responsible for authorizing Offeror’s activities have agreed that their proposal should be submitted;
- if applicable, acknowledges receipt of any and all amendments to this RFP; and
- is signed by the person authorized to contractually obligate the Offeror.

B. Documentation of experience, education, knowledge, and capability (Refer to Proposal Evaluation Criteria);

C. Organizational References - Offerors must also provide two business references from similar projects performed for private, state, or large local government clients within the last three years. Offerors are required to submit Attachment 1 to the business references they list. The business references must submit the Reference Questionnaire directly to the EMNRD Contact Person listed in Section X below. Offerors are responsible for ensuring that the completed forms are received by or before the proposal submission deadline for inclusion in the evaluation process. Business references that are not received, or are not complete, may adversely affect the Offeror’s score in the evaluation process. The Evaluation Team may contact any or all business references for validation of information submitted.

D. If applicable, Offerors will be awarded additional points if their principle place of business is located in New Mexico, and if that business is owned by a veteran as defined in NMSA 1978, §§ 13-1-21 and 13-1-22. To be awarded New Mexico business and veteran business points, Offerors must include a copy of the Resident Veteran Business
Certification, as issued by TRD, in their proposal response. For specifics, Offerors may contact TRD at (505) 827-0951, or visit TRD’s website at: http://www.tax.newmexico.gov/Pages/TRD-Homepage.aspx.

E. Campaign Contribution Form (Attachment 2) -- Offeror shall complete, sign, and submit with Offeror’s proposal response the Campaign Contribution Disclosure Form and disclose whether Offeror, a family member, or a representative of the Offeror has made a campaign contribution to an applicable public official during the two years prior to the RFP. Offeror shall complete the non-disclosure statement or make separate disclosures for all campaign contributions given by (1) the Offeror, (2) a family member, or (3) a representative of the Offeror; and

F. Completed, signed Statement of Assurances Form (Attachment 3).

Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

SECTION VI. CONTRACT AWARD AND DURATION

The contract period may extend from the date of contract approval by the Department of Finance and Administration (DFA) for a period not to exceed 48 months, including amendments.

EMNRD may award a contract or contracts under the terms of the attached draft Professional Services Agreement (PSA) (Attachment 4) and in accordance with this RFP. Any PSA awarded as a result of this RFP shall not be binding until approved by the Department of Finance (DFA) and Administration.

Protest Period

Pursuant to NMSA 1978, § 13-1-172 and applicable procurement rules, Offerors who are not selected for funding have the right to timely protest the procurement. Protests must be written and must include: the name and address of the protestor and the name of the procurement being protested; a statement of the grounds for protest including appropriate supporting exhibits; and the ruling requested from the Division. The protest period begins on the day after notice of selection/non-selection and ends at 5 p.m. 15 days later. Protests must be delivered to: Kim Sanchez, Procurement Agent, EMNRD, State Parks Division, 1220 S. St. Francis Drive, Santa Fe, N.M., 87505.
SECTION VII. PROPOSAL EVALUATION CRITERIA

The Division shall use the following criteria in the evaluation of proposals and in the selection of the successful Offeror.

<table>
<thead>
<tr>
<th>Factor/Criteria</th>
<th>Points Available</th>
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<tr>
<td>Statement of Qualifications:</td>
<td>45</td>
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<tr>
<td>• licenses held*;</td>
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<tr>
<td>• Offeror’s education; and</td>
<td></td>
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<td>• professions affiliations and memberships.</td>
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<tr>
<td>Statement of Experience:</td>
<td>45</td>
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<td>• minimum of four years zoo experience as specified in Section III, Qualifications, above;</td>
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<td>• ability/experience in staff training;</td>
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<tr>
<td>• ability to provide all parameters of veterinary service</td>
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<tr>
<td>Organizational Capacity and Qualified Support:</td>
<td>10</td>
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<tr>
<td>• education and licenses of support veterinarians; and</td>
<td></td>
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<tr>
<td>• support veterinarian(s) experience as described in Section III, Qualifications, above.</td>
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<tr>
<td>References:</td>
<td>18 maximum</td>
</tr>
<tr>
<td>Points will be awarded based upon an evaluation of the responses to a series of questions that will be asked of the references concerning the quality of the Offeror’s services, the timeliness of services, responsiveness to problems and complaints, and the level of satisfaction with the Offeror’s overall performance (See Attachment 1, Reference Questionnaire).</td>
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<tr>
<td>New Mexico Business or Veterans Preference</td>
<td>5 points for principle place of business and 5 points for resident veterans preference</td>
</tr>
<tr>
<td>TOTAL</td>
<td>128 maximum**</td>
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</table>

* Offerors must possess a degree of Doctor of Veterinary Medicine or Veterinariae Medicinae Doctoris from a recognized and accredited veterinary college, and must be accredited in the State of New Mexico and meet all applicable current veterinary licensing requirements from the State of New Mexico, or their proposals will be deemed non-responsive.

** Offerors may receive up to 118 points for the specified categories, as well as up to 10 additional points for resident business and veterans preference.
SECTION VIII. EVALUATION PROCESS

The evaluation process will follow the steps listed below:

A. The Evaluation Team members will document contents of competitive sealed proposals after the submittal deadline.

B. The Evaluation Team will review proposals for compliance with the mandatory requirements stated within this RFP.

C. The Contact Person may contact Offerors for clarification of the proposal.

D. The Evaluation Team will evaluate responsive proposals based on the criteria in Section VII, Proposal Evaluation Criteria, and will select responsive Offeror(s) with the highest total weighted scores as finalist Offeror(s). The Evaluation Team will consult with listed references and select the finalist Offeror(s) whose proposal and references is/are most advantageous to EMNRD, for award.

SECTION IX. CONTACT PERSON AND PROPOSAL DUE DATE

Questions regarding this RFP shall be addressed to:

Adrian Stiteler, Southeast Regional Manager
Southeast Region Office
EMNRD, State Parks Division
324 South Canyon
Carlsbad, New Mexico 88220
Phone: (575) 887-2757

Offerors shall submit one original and four identical hard copies of the proposal at the address above, no later than 4:30 p.m. Mountain Daylight Time, April 29, 2016. In the event proposals are mailed, they must be physically received at the above location by the stated date and time in order to be considered. EMNRD shall not accept proposals received after this date and shall make absolutely no exceptions for proposals not received at the above location by the appointed time. RFP responses MAY NOT be sent by facsimile or e-mail.

SECTION X. NOTICES

Award of agreements is contingent upon sufficient appropriations and authorization being made by the State of New Mexico.

The money made available to support any PSA entered into as a result of this RFP must cover Gross Receipts Taxes as a component of the total PSA amount.

EMNRD may cancel this RFP and reject any and all proposals when it is in the State of New Mexico’s best interests.

EMNRD may conduct discussions with Offerors who submit proposals, but may also accept proposals without such discussions.
The New Mexico Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.
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REFERENCE QUESTIONNAIRE

<table>
<thead>
<tr>
<th>Name of Individual/Entity Requesting Reference:</th>
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The State of New Mexico, as a part of the RFP process, requires Offerors to submit a minimum of two business references as required within this document. The purpose of these references is to document the experience relevant to the scope of work and provide assistance in the evaluation process.

The Offeror is required to send this reference form to each business reference listed. The business reference, in turn, is requested to submit the Reference Form directly to the Procurement Manager by the RFP submission deadline for inclusion in the evaluation process. The form and information provided will become a part of the submitted proposal.

This form is being submitted to you for completion as a business reference for the individual or entity above. Please return this completed form directly to the Contact Person (Adrian Stiteler, Southeast Regional Manager, Southeast Region Office, EMNRD, State Parks Division, 324 South Canyon, Carlsbad, New Mexico 88220, telephone: (575) 887-2757; e-mail: adrian.stiteler@state.nm.us) no later than April 29, 2016. Do not return this form to the individual or entity requesting the reference.

For questions or concerns regarding this form, please contact the Procurement Manager listed above.

<table>
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<tr>
<th>Name of Individual/Entity Providing Reference:</th>
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| Contact Name and Title/Position: |

| Contact Telephone Number: |

| Contact E-Mail Address: |

| QUESTIONS |

1. In what capacity have you worked with this Offeror in the past? (Please explain)

| 2. How would you rate this Offeror’s knowledge and expertise? (Check one) |
| 3 – Excellent __ | 2 – Satisfactory __ | 1 – Unsatisfactory __ | 0 – Unacceptable __ |

Comments: ________________________________________________________________________________________

| 3. How would you rate the Offeror’s flexibility relative to changes in the project scope and timelines? (Check one) |
| 3 – Excellent __ | 2 – Satisfactory __ | 1 – Unsatisfactory __ | 0 – Unacceptable __ |

Comments: ________________________________________________________________________________________
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4. What is your level of satisfaction with hard-copy materials produced by the Offeror? (Check one)
   3 – Excellent ___  2 – Satisfactory ___  1 – Unsatisfactory ___  0 – Unacceptable ___
   Comments: ____________________________________________________________

5. How would you rate the dynamics/interaction between the Offeror and your staff? (Check one)
   3 – Excellent ___  2 – Satisfactory ___  1 – Unsatisfactory ___  0 – Unacceptable ___
   Comments: ____________________________________________________________

6. Who were the Offeror’s principal representatives involved in your project and how would you rate them individually? Would you comment on the skills, knowledge, behaviors, or other factors on which you based the rating? (3 – Excellent; 2 – Satisfactory; 1 – Unsatisfactory; 0 – Unacceptable)
   Principal Representative Name: ___ Rating: ________
   Principal Representative Name: ___ Rating: ________
   Principal Representative Name: ___ Rating: ________
   Principal Representative Name: ___ Rating: ________
   Comments: ____________________________________________________________

7. How satisfied are you with the products developed by the Offeror? (Check one)
   3 – Excellent ___  2 – Satisfactory ___  1 – Unsatisfactory ___  0 – Unacceptable ___
   Comments: ____________________________________________________________

8. With which aspect(s) of the Offeror’s services are you most satisfied? (Please explain)

9. With which aspect(s) of the Offeror’s services are you least satisfied? (Please explain)

10. Would you recommend this vendor’s services to your organization again? (Please explain)
CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor seeking to enter into a contract with any state agency or local public body for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars ($250) over the two year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 of the Procurement Code if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official’s employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

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

The following definitions apply:

“Applicable public official” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

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

“Family member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor.

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

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

“Representative of a prospective contractor” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.
Note: A prospective contractor shall make separate disclosures of all campaign contributions given by (1) the prospective contractor, or (2) a family member or (3) representative of the prospective contractor, or shall complete the non-disclosure statement, as applicable.

DISCLOSURE OF CONTRIBUTIONS:

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<tr>
<th>Contribution Made By:</th>
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<tr>
<td>Relation to Prospective Contractor:</td>
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<tr>
<td>Name of Applicable Public Official:</td>
<td>Governor _____________________</td>
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<tr>
<th>Contribution(s) Date(s)</th>
<th>Contribution Amount(s):</th>
<th>Nature of Contribution(s):</th>
<th>Purpose of Contribution(s):</th>
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(Attach extra pages if necessary)

Signature: _______________________________ Date: _________________

Title/Position: _______________________________

--OR--

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS ($250) WERE MADE to an applicable public official by me, a family member or representative.

Signature: _______________________________ Date: _________________

Title/Position: _______________________________
Each Offeror MUST complete this form and return it with Offeror’s proposal or EMNRD will deem the proposal as non-responsive. By signing this form below, Offeror acknowledges and agrees to the following:

<table>
<thead>
<tr>
<th>Each Offeror MUST complete this form and return it with Offeror’s proposal or EMNRD will deem the proposal as non-responsive. By signing this form below, Offeror acknowledges and agrees to the following:</th>
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<tbody>
<tr>
<td>This RFP does not commit the State of New Mexico (State) to pay any costs incurred in the preparation or submission of this proposal. Any cost incurred by the Offeror in developing a proposal response shall be borne solely by the Offeror. Offeror understands that that Offeror’s proposal shall become part of the official file on this matter without obligation to the State. Issuance of this RFP does not constitute an award commitment on the part of the State.</td>
</tr>
<tr>
<td>Offeror shall examine all contract documents, noting particularly all stipulations that in any way affect contract work. Failure of an Offeror to acquaint itself fully with the amount and nature of the work required to fulfill all terms of the contract documents shall not be considered a basis for extra compensation after a contract has been awarded.</td>
</tr>
<tr>
<td>Offeror represents and warrants to the State that Offeror has the staff, facilities, and competence to furnish the required services. The State may investigate Offeror’s adequacy of the staff, facilities, and competence. For this purpose, representatives of the State may make an inspection of Offeror’s facilities, equipment, etc., and interview staff.</td>
</tr>
<tr>
<td>In order to receive consideration, Offeror’s proposal must be signed by an officer having the authority to bind Offeror.</td>
</tr>
<tr>
<td>Offeror agrees to comply with all relevant federal and state laws and regulations or rules.</td>
</tr>
<tr>
<td>New Mexico Employees Health Coverage:</td>
</tr>
<tr>
<td>If Offeror has, or grows to, six or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six-month period during the term of any Agreement which may result from this RFP, Offeror agrees, by submitting a proposal, to have in place, and agrees to maintain for the Agreement’s term, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Offeror and the state exceed $250,000.</td>
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<tr>
<td>Offeror agrees to maintain a record of the number of employees who have:</td>
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<tr>
<td>1)</td>
<td>accepted health insurance;</td>
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<tr>
<td>2)</td>
<td>declined health insurance due to other health insurance coverage already in place; or</td>
</tr>
<tr>
<td>3)</td>
<td>declined health insurance for other reasons.</td>
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These records are subject to review and audit by a representative of the State. |
| Offeror agrees to advise all employees of the availability of state publicly-financed health care coverage programs. |
| Employee Pay Equity Reporting – |

A. Offeror agrees if it has 10 or more New Mexico employees OR eight or more employees in the same job classification, at any time during the term of any Agreement which may result from this RFP, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one year in duration. |

B. If Offeror has 250 or more employees, Offeror must complete and submit the PE250 form on
the annual anniversary of the initial report submittal for contracts up to one year in duration.

C. For contracts that extend beyond one calendar year, Offeror also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within 30 days of the annual contract anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract, whichever comes first.

D. Should Offeror not meet the size requirement for reporting at contract award but subsequently grows such that Contractor meets or exceeds the size requirement for reporting, Offeror agrees to provide the required report within 90 days of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter.

E. Offeror also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this Agreement if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Offeror further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that the subcontractor meets or exceeds the size requirement for reporting, Offeror shall submit the required report, for each such subcontractor, within 90 days of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal.

F. Offeror shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Offeror acknowledges that this subcontractor requirement applies even though Offeror itself may not meet the size requirement for reporting and be required to report itself.

Additional Pay Equity Reporting Information

For the purposes of complying with the Pay Equity Reporting Information section above:

1. “Job Classification” means an arrangement of tasks in an establishment or industry into a limited series of jobs or occupations, rated in terms of skill, responsibility, experience, training, and similar considerations, usually for wage setting purposes. This term, or job class, refers to a single cluster of jobs of approximately equal “worth.”

2. “New Mexico Employee” (also “Employee”) means a person working within the State of New Mexico at a New Mexico facility, regardless where the employee legally resides, and regardless of the origin of compensation checks.

3. “PE10-249 form” means the reporting form to be used by contractors that meet or exceed the minimum size thresholds for reporting but have less than 250 New Mexico employees.

4. “PE250 form” means the reporting form to be used by contractors that have 250 or more New Mexico employees.

5. “Solicitation” means an Invitation to Bid or a Request for Proposals.

B. Report Submittal: Until further notice, successful Offeror shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined. The mailing address is: PO Box 6850, Santa Fe, NM, 87502-6850.
C. The successful Offeror shall not be required to report more frequently than annually unless more than 180 calendar days has elapsed since submittal of the last report and the contract has reached completion. The requirement for reporting at contract completion shall not apply in the case of a one-time fulfillment of a purchase order.

D. Exceptions to the Pay Equity Reporting Requirement:

1. Offerors with fewer than 10 employees are exempt, unless they have at least eight employees in the same job classification.

2. Offerors receiving a contract resulting from an emergency procurement are exempt, unless they hold other contracts that would already subject them to the requirement.

E. Offerors who are subject to the Pay Equity Reporting Requirement shall complete and sign the applicable pay equity form (PE 10-249 or PE250) and submit the form with their proposal. Offerors who fall within an exception to the Pay Equity Reporting Requirement shall include a statement in their transmittal letter that indicates they are exempt and cites the specific exception they fall under.

| Application of Veterans Preference or New Mexico Business Preference: |
| To be awarded New Mexico business and veteran business points, Offerors must include a copy of the Resident Veteran Business Certification, as issued by TRD, in their proposal response. |

<table>
<thead>
<tr>
<th>Offeror Signature</th>
<th>Date:</th>
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<tbody>
<tr>
<td>Offeror's Printed Name and Title:</td>
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STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between the State of New Mexico, Energy, Minerals and Natural Resources Department (EMNRD), and (insert Contractor Name) (Contractor), and is effective as of the date set forth below upon which it is executed by the Department of Finance and Administration (DFA).

IT IS AGREED BETWEEN THE PARTIES:

1. **Scope of Work.**

   Contractor shall perform the following work:

   (Insert Scope of Work here.)

2. **Compensation.**

   **Option 1: Work Product.** If you choose this option, delete this Option 1 heading and delete Options 2 and 3 below.

   A. EMNRD shall pay Contractor for services satisfactorily performed pursuant to the Scope of Work and as specified below. This amount shall not exceed ___________________________ ($ ______________), which amount includes New Mexico gross receipts taxes, if any, and travel, pursuant to Paragraph C of this Compensation Section. EMNRD shall make payment upon the satisfactory and timely completion of the work described in the Scope of Work and for no more than the maximum amount set forth below for each deliverable:

   (Insert deliverables/payment schedule here. Delete this instruction)

   This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying EMNRD when the services provided under this Agreement reach the total compensation amount. In no event shall Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

   B. Payment is subject to availability of funds pursuant to Section 5, Appropriations, set forth below, and to any negotiations between the parties from year to year pursuant to Section 1, Scope of Work, and to approval by the Department of Finance and Administration (DFA). EMNRD MUST receive all invoices no later than 15 days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date SHALL NOT BE PAID.
Option 2: Lump Sum Amount Upon Completion of All Work. If you choose this option, delete Paragraph C of this Compensation Section as well and re-letter successive paragraphs accordingly. Delete Option 1 above as well. Delete this Option 2 heading.

A. Upon satisfactory completion of services, EMNRD shall pay Contractor for services satisfactorily performed pursuant to the Scope of Work in an amount not to exceed ____________________($_________________), which amount includes New Mexico gross receipts taxes, if any, and any travel, if necessary.

B. Payment is subject to availability of funds pursuant to Section 5, Appropriations, set forth below, and to any negotiations between the parties from year to year pursuant to Section 1, Scope of Work, and to approval by the Department of Finance and Administration (DFA). In no event shall Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided. EMNRD MUST receive all invoices no later than 15 days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date SHALL NOT BE PAID.

Option 3: Time and Materials. If you choose this option, delete this Option 3 heading and Options 1 and 2 above.

A. EMNRD shall pay to Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work rendered at the rate of $00.00 per hour, such compensation not to exceed $.00, which amount includes New Mexico gross receipts taxes, if any, and travel pursuant to Paragraph C of this Compensation Section. This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying EMNRD when the services provided under this Agreement reach the total compensation amount.

B. Payment is subject to availability of funds pursuant to the Appropriations Section set forth below and to any negotiations between the parties from year to year pursuant to Section 1, Scope of Work, and to approval by the DFA. In no event shall Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided. EMNRD MUST receive all invoices no later than 15 days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date SHALL NOT BE PAID.

(For multi-year contracts, include the following language. Remove this direction.)

Payment in (subsequent fiscal years – insert the Fiscal Years this Agreement covers) is subject to availability of funds pursuant to Section 5, Appropriations, set forth below and to any negotiations between the parties from year to year pursuant to Section 1, Scope of Work, and to approval by DFA.

C. (To be negotiated at EMNRD’s discretion.) EMNRD shall pay such travel expenses as may be incurred in, and that are necessary for, the performance of this Agreement at the rates established in the New Mexico Per Diem and Mileage Act, NMSA 1978, §§ 10-8-1 et seq., as implemented by the current Department of Finance and Administration (DFA) rule and the current EMNRD Travel Policy.
D. Contractor shall be responsible for paying New Mexico Gross Receipts taxes, if any, levied on amounts payable under this Agreement.

E. Contractor must submit detailed statements accounting for all services performed, goods obtained, and expenses incurred. *(Vouchers must be supported by approved purchase order or equivalent document and invoice by the supplier, evidencing the propriety of each claim for payment. Wage amounts charged shall be based upon payrolls maintained by Contractor and must be supported by time and attendance sheets.)* If EMNRD finds that the statement, services, goods, or expenses are not acceptable, within 30 days after the date of receipt of (i) written notice from Contractor that payment is requested, and (ii) all supporting documentation, EMNRD shall provide Contractor a letter of exception explaining the defect or objection to the statement, services, goods, or expenses, and outlining steps Contractor may take to provide remedial action. Upon EMNRD’s certification that the statement, supporting documentation, services, goods, or expenses have been received and accepted, EMNRD shall tender payment to Contractor within 30 days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, EMNRD shall not incur late charges, interest, or penalties, for failure to make payment within the time specified herein.

3. **Term.**

   **THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE DFA.** This Agreement shall terminate on (insert date) unless terminated pursuant to Section 4, Termination, or Section 5, Appropriations, of this Agreement. In accordance with NMSA 1978, § 13-1-150 no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in NMSA 1978, § 13-1-150.

4. **Termination.**

   A. **Grounds.** EMNRD may terminate this Agreement for convenience or cause. Contractor may only terminate this Agreement based upon EMNRD’s uncured, material breach of this Agreement.

   B. **Notice; EMNRD Opportunity to Cure.**

       1) Except as otherwise provided in Paragraph (4)(B)(3), EMNRD shall give Contractor written notice of termination at least 30 days prior to the date of termination.

       2) Contractor shall give EMNRD written notice of termination at least 30 days prior to the intended date of termination, which notice shall (i) identify all EMNRD’s material breaches of this Agreement upon which the termination is based and (ii) state what EMNRD must do to cure such material breaches. Contractor’s notice of termination shall only be effective (i) if EMNRD does not cure all material breaches within the 30-day notice period or (ii) in the case of material breaches that cannot be cured within 30 days, EMNRD does not, within the 30-day notice period, notify Contractor of EMNRD’s intent to cure and begin with due diligence to cure the material breach.

       3) Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to Contractor (i) if Contractor becomes unable to perform the services contracted for, as EMNRD determines; (ii) if, during this Agreement’s term, Contractor
is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Section 5, Appropriations, below; or (iv) this Agreement is terminated pursuant to Section 13, Conflict of Interest; Governmental Conduct Act, Subparagraph C.

C. **Liability.** Except as otherwise expressly allowed or provided under this Agreement, EMNRD’s sole liability upon termination shall be to pay for acceptable work performed prior to Contractor’s receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party’s liability for pre-termination defaults under or breaches of this Agreement. Contractor shall submit an invoice for such work within 30 days of receiving or sending the notice of termination. This provision is not exclusive and does not waive EMNRD’s other legal rights and remedies caused by Contractor’s default/breach of this Agreement.

D. **Termination Management.** Immediately upon receipt by either EMNRD or Contractor of notice of termination of this Agreement, Contractor shall:

1) not incur any further obligations for salaries, services, or any other expenditure of funds under this Agreement without EMNRD’s written approval;

2) comply with all directives EMNRD issues in the notice of termination as to the performance of work under this Agreement; and

3) take such action as EMNRD shall direct for the protection, preservation, retention, or transfer of all property titled to EMNRD and records generated under this Agreement.

E. Any non-expendable personal property or equipment provided to Contractor by EMNRD or purchased by Contractor with Agreement funds shall become EMNRD’s property upon termination and shall be submitted to EMNRD as soon as practicable. (If federal funding is involved, include the following clause. If not, delete it.) Otherwise, all property procured under this Agreement shall be used and disposed of in accordance with (insert name of federal funding entity) regulations.

5. **Appropriations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico and (insert name of federal funding entity) for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature and (insert name of federal funding entity), this Agreement shall terminate immediately upon written notice being given by EMNRD to Contractor. EMNRD’s decision as to whether sufficient appropriations are available shall be accepted by Contractor and shall be final. If EMNRD proposes an amendment to the Agreement to unilaterally reduce funding, Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within 30 days of receipt of the proposed amendment.

6. **Status of Contractor.**

Contractor and its subcontractors, agents, and employees are independent contractors performing professional services for EMNRD and are not employees of the State of New Mexico. Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico.
Mexico as a result of this Agreement. Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. Contractor may not, does not have the authority to, and agrees not to purport to bind the State of New Mexico unless Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. **Assignment.**

Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without EMNRD’s prior written approval.

8. **Subcontracting.**

Contractor shall not subcontract any portion of the services to be performed under this Agreement without EMNRD’s prior written approval. No such subcontract shall relieve Contractor from Contractor’s obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from EMNRD.

9. **Release.**

Final payment of the amounts due under this Agreement shall operate as a release of EMNRD, its officers and employees, and the State of New Mexico from all liabilities, claims, and obligations whatsoever arising from or under this Agreement.

10. **Confidentiality.**

Any confidential information provided to or developed by Contractor in the performance of this Agreement shall be kept confidential by the Contractor and shall not be made available to any individual or organization by Contractor without EMNRD’s prior written approval.

11. **Acknowledgement.** *(Option: Include in PSA if acknowledgement required. If not using this section, delete it and renumber successive sections accordingly. Delete this instruction.)*

Contractor shall acknowledge EMNRD and (insert name of federal funding entity) as a co-sponsor and funding source in all news releases, programs, proceedings, and related publicity/publications for the Project.

12. **Product of Service -- Copyright.**

All materials developed or acquired by Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to EMNRD no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of Contractor.

13. **Conflict of Interest; Governmental Conduct Act.**

A. Contractor represents and warrants that Contractor presently has no interest and, during this Agreement’s term, shall not acquire any interest, direct or indirect,
which would conflict in any manner or degree with the performance or services required under the Agreement.

B. Contractor further represents and warrants that Contractor has complied with, and, during this Agreement’s term, shall continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, NMSA 1978, §§ 10-16-1 through 10-16-18. Without in any way limiting the generality of the foregoing, Contractor specifically represents and warrants that:

1) in accordance with NMSA 1978, § 10-16-4.3, Contractor does not employ, has not employed, and shall not employ during this Agreement’s term any EMNRD employee who, while such employee was or is employed by EMNRD, participated directly or indirectly in EMNRD’s contracting process;

2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) Contractor is not a public officer or employee of the state; (ii) Contractor is not a member of the family of a public officer or employee of the state; (iii) Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if Contractor is a public officer or employee of the state, a member of the family of a public officer or employee of the state, or a business in which a public officer or employee of the state or the family of a public officer or employee of the state has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;

3) in accordance with NMSA 1978, § 10-16-8(A), (i) Contractor is not, and has not been represented by, a person who has been a public officer or employee of the state within the preceding year and whose official act directly resulted in this Agreement and (ii) Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the state whose official act, while in state employment, directly resulted in EMNRD’s making this Agreement;

4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) Contractor is not a legislator; (ii) Contractor is not a member of a legislator’s family; (iii) Contractor is not a business in which a legislator or a legislator’s family has a substantial interest; or (iv) if Contractor is a legislator, a member of a legislator’s family, or a business in which a legislator or a legislator’s family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-9(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with NMSA 1978, § 10-16-13, Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, Contractor has not contributed, and during this Agreement’s term, shall not contribute, anything of value to a public officer or employee of EMNRD.

C. Contractor’s representations and warranties in Paragraphs A and B of this Section are material representations of fact upon which EMNRD relied when EMNRD and Contractor entered into this Agreement. Contractor shall provide immediate written notice to
EMNRD if, at any time during this Agreement’s term, Contractor learns that Contractor’s representations and warranties in Paragraphs A and B of this Section were erroneous on this Agreement’s effective date or have become erroneous by reason of new or changed circumstances occurring after this Agreement’s effective date. If EMNRD later determines that Contractor’s representations and warranties in Paragraphs A and B of this Section were erroneous on this Agreement’s effective date or have become erroneous by reason of new or changed circumstances occurring after this Agreement’s effective date, in addition to other remedies available to EMNRD and notwithstanding anything in the Agreement to the contrary, EMNRD may immediately terminate this Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Section.

14. Amendment.

This Agreement shall not be altered, changed, or amended, except by instrument in writing executed by the parties hereto and all other required signatories.

15. Merger.

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written Agreement. No prior agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

16. Penalties for Violation of Law.

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

17. Equal Opportunity Compliance.

Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation, or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

18. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement, without giving effect to New Mexico’s choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1(G). By execution of this Agreement, Contractor acknowledges and agrees to the exclusive jurisdiction of the courts of
the State of New Mexico over any and all lawsuits arising under or out of any of this Agreement’s terms.

19. **Insurance.** *(Type of insurance required varies with nature of work performed. Will always require Workers’ Compensation. Delete this instruction.)*

   A. Contractor certifies that, by signing this Agreement, to have in place and agrees to maintain for this Agreement’s term, the following policy or policies of insurance providing:

   1) Workers’ Compensation protection that complies with the requirements of the New Mexico Workers’ Compensation Act, NMSA 1978, §§ 52-1-1 et seq., if applicable. If Contractor fails to comply with the Workers’ Compensation Act and applicable rules when required to do so, EMNRD may terminate this Agreement.

   2) Comprehensive public liability protection covering property damage and personal injury liability that may arise under this Agreement and any amendment hereto, in amounts equal to or greater than liability limits set forth in NMSA 1978, § 41-4-19, as may be amended from time to time. Such policy or policies shall name the State of New Mexico and EMNRD as co-insured or as principal beneficiaries.

   3) Comprehensive performance liability protection covering contractual liability that may arise under this Agreement and any amendment hereto. Such insurance policy or policies shall name the State of New Mexico and EMNRD as co-insured or as principal beneficiaries.

   B. At EMNRD’s request, Contractor shall provide EMNRD with a copy of the insurance policy. Contractor shall notify EMNRD 10 days before cancellation or expiration of any required Workers’ Compensation or contractual or public liability insurance coverage. *(Only include the terms “contractual” or “public liability” if you ask for them.)*

20. **Records and Financial Audit.**

   A. Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during this Agreement’s term and effect and retain them for a period of three (3) years from the termination date specified in Section 3, Term. *(Option: If you are using federal funding, Contractor must retain the records for three years after the funding expires, even if the contract ends prior to the funding expiring. Revise this paragraph to indicate a date certain by which Contractor must retain the records. Delete this instruction.)* Contractor shall make such records available to EMNRD within five working days upon EMNRD’s request. The records shall be subject to inspection by EMNRD, DFA, the State Auditor and *(insert name of federal funding entity)*. Contractor further agrees to include in all subcontracts hereunder the same right of inspection and audit against all subcontractors. EMNRD shall have the right to audit billings both before and after payment. EMNRD shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments. In EMNRD’s, DFA’s, or the State Auditor’s *(or insert name of federal funding entity)*’s sole discretion, the periods of inspection and audit may be extended for records, which relate to litigation or settlement of claims arising out of performance of this Agreement *(and costs and expenses of this Agreement for which exception is under consideration by the federal funding agency or any authorized representative)* and shall continue until all potential litigation, appeals,
claims, or exceptions have expired or been resolved.

(Option: Are you using federal funds to pay for this contract? If yes, you need to include the following paragraph in your contract because the requirements are cumulative. If no, delete this paragraph. Delete this instruction.)

B. If Contractor receives more than $500,000 in federal funds in the aggregate from any source in a fiscal year, Contractor’s financial records involving services and procurement under this Agreement shall be audited annually pursuant to all federal, state, and local government audit requirements (insert specific audit requirements, if any. If not, delete this instruction.) and 2 C.F.R. Part 225 and the federal OMB Circular A-133, as prescribed by the Single Audit Act of 1984, or any subsequent OMB Circular. Contractor shall provide EMNRD with a copy of the independent financial audit, either in hard copy format or on disk, no more than 45 days after the audit’s completion for each fiscal year this Agreement is in effect.

21. **Indemnification.**

The Contractor shall defend, indemnify and hold harmless EMNRD, its officers, employees, agents, and representatives and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys’ fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent or intentional act or failure to act of the Contractor, its officers, employees, servants, subcontractors, consultants, clients, or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor, Contractor’s officers, agents, employees, servants, subcontractors, or consultants thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor, Contractor’s officers, agents, employees, servants, subcontractors, clients, or consultants under this Agreement is brought against the Contractor, or any of Contractor’s officers, agents, employees, servants, subcontractors, clients, or consultants, the Contractor shall, as soon as practicable but no later than two days after it receives notice thereof, notify the legal counsel of the Agency and the Risk Management Division of the New Mexico General Services Department by certified mail. Nothing in this Agreement shall be deemed to be a waiver by the State of New Mexico of the provisions of the Tort Claims Act, NMSA 1978, §§ 41-4-1 et seq.

22. **New Mexico Employees Health Coverage.**

A. If Contractor has, or grows to, six or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six-month period during the term of this Agreement, Contractor certifies, by signing this Agreement, to have in place, and agree to maintain for this Agreement’s term, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the state exceed $250,000.

B. Contractor agrees to maintain a record of the number of employees who have:

1) accepted health insurance;

2) declined health insurance due to other health insurance coverage already in place; or
3) declined health insurance for other reasons.

These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of state publicly-financed health care coverage programs.

23. **Employee Pay Equity Reporting.**

A. Contractor agrees if it has 10 or more New Mexico employees OR eight or more employees in the same job classification, at any time during the term of this contract, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one year in duration.

B. If Contractor has 250 or more employees, Contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts up to one year in duration.

C. For contracts that extend beyond one calendar year, or are extended beyond one calendar year, Contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within 30 days of the annual contract anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of this Agreement, whichever comes first.

D. Should Contractor not meet the size requirement for reporting at contract award but subsequently grows such that Contractor meets or exceeds the size requirement for reporting, Contractor agrees to provide the required report within 90 days of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter.

E. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this Agreement if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that the subcontractor meets or exceeds the size requirement for reporting, Contractor shall submit the required report, for each such subcontractor, within 90 days of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal.

F. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though Contractor itself may not meet the size requirement for reporting and be required to report itself.

G. Notwithstanding the foregoing, if this Agreement was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying Contractor’s response to such solicitation, the report does not need to be re-submitted with this Agreement.
24. **Additional Pay Equity Reporting Information.**

   A. For the purposes of complying with Section 23, Employee Pay Equity Reporting:

   1) “Job Classification” means an arrangement of tasks in an establishment or industry into a limited series of jobs or occupations, rated in terms of skill, responsibility, experience, training, and similar considerations, usually for wage setting purposes. This term, or job class, refers to a single cluster of jobs of approximately equal “worth.”

   2) “New Mexico Employee” (also Employee) means a person working within the State of New Mexico at a New Mexico facility, regardless where the employee legally resides, and regardless of the origin of compensation checks.

   3) “PE10-249 form” means the reporting form to be used by contractors that meet or exceed the minimum size thresholds for reporting but have less than 250 New Mexico employees.

   4) “PE250 form” means the reporting form to be used by contractors that have 250 or more New Mexico employees.

   5) “Solicitation” means an Invitation to Bid or a Request for Proposals.

   B. Exceptions to the Pay Equity Reporting Requirement:

   1) Contractors with fewer than 10 employees are exempt, unless they have at least eight employees in the same job classification.

   2) Contractors receiving a contract resulting from an emergency procurement are exempt, unless they hold other contracts that would already subject them to the requirement.

   3) Out-of-state Contractors that have no facilities and no employees working in New Mexico are exempt if the contract is directly with the out-of-state contractor and fulfilled directly by the out-of-state contractor, and not passed through a local vendor.

25. **Invalid Term or Condition.**

   If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable, unless failing to give effect to such term or condition defeats the purpose of this Agreement.

26. **Enforcement of Agreement.**

   A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict performance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.
27. **Notices.**

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To EMNRD:

(*insert position title and address of project manager*)

Assistant General Counsel  
EMNRD – Office of the Secretary  
1220 S. St. Francis Drive  
Santa Fe, NM 87505

To Contractor:

(*insert name, address and e-mail*)

To Risk Management Division:

Risk Management Division  
General Services Department  
P.O. Drawer 26100  
Santa Fe, NM 87502-0110

28. **Attorneys’ Fees and Costs.** *(Negotiable clause.)*

Contractor agrees that if Contractor is found by a court of competent jurisdiction to have breached this Agreement, or any amendments hereto, or to have committed any tortious act relating to the scope of this Agreement, EMNRD may recover from Contractor reasonable attorneys’ fees and costs in connection with pre-litigation enforcement efforts, litigation brought to obtain such judicial determination, or any appeal of such determination, and to collect any judgment.

29. **Minimum Wage Rate.**

If applicable, Contractor shall comply with minimum wage rates as established by the New Mexico Department of Workforce Solutions, Labor Relations Division, and with all other applicable requirements of that Department, including posting of the wage rates in a prominent location on the site of hiring for and performance of this Agreement.

30. **Compliance with Funding Source Conditions.**

Contractor shall comply with all applicable state and federal statutes and rules or regulations imposed as a consequence of funding pursuant to this Agreement.
31. **Authority.**

If Contractor is other than a natural person, the individual(s) signing this Agreement on Contractor’s behalf and Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding agreement.

**IN WITNESS WHEREOF,** the parties have executed this Agreement as of the date of signature by the DFA Contracts Review Bureau, below.

**STATE OF NEW MEXICO, ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT**

By: ___________________________ Date: ___________________________
Cabinet Secretary or Designee

By: ___________________________ Date: ___________________________
Legal Counsel - Certifying legal sufficiency

By: ___________________________ Date: ___________________________
Chief Financial Officer

**CONTRACTOR NAME**

Federal ID No.: ___________________________

By: ___________________________ Date: ___________________________
Authorized Representative Signature

Printed Name and Title

This Agreement has been approved by the DFA Contracts Review Bureau

By: ___________________________ Date: ___________________________
The records of the Taxation and Revenue Department reflect that Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

STATE OF NEW MEXICO
TAXATION AND REVENUE DEPARTMENT

I.D. No.: ________________________________
(must be 11 digits long)

By: ______________________________________

Date: ________________________________