



**State of New Mexico  
General Services Department  
State Purchasing Division**

**Statewide Price Agreement Cover Page**

**Awarded Vendor:**

**0000014482**

**Johnson Controls, Inc. (JCI)**

**5500 Midway Park Place NE**

**Albuquerque, NM 87109**

**Attn: Maureen Blasé**

**Email: maureen.g.blase@jci.com**

**Telephone No.: (214) 208-1832**

Agreement Number: **40-00000-23-00029AD**

Payment Terms: **Net 30**

F.O.B.: **Destination**

Delivery: **Per Contract**

**Ship To:**

**All State of New Mexico agencies, commissions,  
institutions, political subdivisions and local public  
bodies allowed by law.**

Procurement Specialist: **Tami Concha**

Telephone No.: **(505) 660-3671**

Email: **Tami.Concha@gsd.nm.gov**

**Invoice:**

**As Requested at time of order**

**For questions regarding this agreement please contact:  
Dennis Romero (505) 660-8605**

**Title: Qualified Providers of Energy Performance Contracting Services, ESCO**

**Term: January 12, 2024 – January 11, 2028**

**The attached Agreement is made subject to the “terms and conditions” as indicated.**

**STATEWIDE PRICE AGREEMENT**  
**#40-00000-23-00029AD**  
**STATE OF NEW MEXICO**  
**FOR**

**Qualified Providers of Energy Performance Contracting Services, ESCO**

THIS AGREEMENT is made and entered into by and between the **General Services Department** and the **State of New Mexico**, herein after referred to as the "Agency", and **Johnson Controls, Inc., (JCI)**, herein after referred to as the "Contractor."

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

**1. DEFINITIONS**

“**Agencies**” or “**Agency**” means eligible governmental entities under the Public Facilities Energy Efficiency and Water Conservation Act [NMSA 1978, 6-23], which are state government, local governments, public schools, higher educational institutions, and other instrumentalities of state government.

“**Agreement Administrator**” shall mean the State Purchasing Division (SPD) of the General Service Department.

“**Close of Business**” means 5:00 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the given date.

“**Contract**” means any agreement for the procurement of items of tangible personal property, services or construction derived from an Invitation to Bid (ITB) or Request For Proposals (RFP).

“**Deliverable**” means any measurable, tangible, verifiable outcome, result, or item that must be produced to complete a project or part of a project.

“**ECMD**” means the Energy Conservation and Management Division of the Energy, Minerals and Natural Resources Department.

“**EMNRD**” means the Energy, Minerals and Natural Resources Department.

“**Energy Conservation Measure,**” or “**ECM**”, means a training program or a modification to a facility, including buildings, systems or vehicles, designed to reduce energy consumption or conservation-related operating costs. More specifically, ECMs that may be proposed by Qualified Providers are stated in the EPC Statute and include:

- (a) Insulation of the building structure or systems within the building;
- (b) Storm windows or doors, caulking or weather-stripping, multi-glazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, additional glazing, reductions in glass area or other window and door system modifications that reduce energy consumption;
- (c) Automated or computerized energy control systems;
- (d) Heating, ventilating or air conditioning system modifications or replacements;

- (e) Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code or nationally accepted standards for the lighting system after the proposed modifications are made;
- (f) Energy recovery systems;
- (g) Solar heating and cooling systems or other renewable energy systems;
- (h) Cogeneration or combined heat and power systems that produce steam, chilled water or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;
- (i) Energy conservation measures that provide long-term operating cost reductions;
- (j) Maintenance and operation management systems that provide long-term operating cost reductions;
- (k) Traffic control systems; or
- (l) Alternative fuel options or accessories for vehicles.

ECMs may also include “conservation-related cost savings,” which are cost savings, other than utility cost savings, in the operating budget of a Governmental Unit that are a direct result of energy or water conservation measures implemented pursuant to a Guaranteed Utility Savings Contract.

**“Energy Performance Contracting” or “EPC”** means a project that is backed up by a written guarantee stating that the utility cost savings and conservation-related cost savings will meet or exceed the costs of implemented ECMs or WCMs.

**“ESCO”** means Energy Service Company that can provide energy audit, project development, implementation, financing, and monitoring services to Agencies for ECMs or WCMs.

**“Guaranteed Utility Savings Contracts,”** means contracts for the evaluation and recommendation of energy or water conservation measures and for the implementation of one or more of those measures, and which contract provides that all payments, except obligations on termination of the contract before its expiration, are to be made over time and the savings are guaranteed to the extent necessary to make the payments for the conservation measures.

**“Investment-Grade Energy Audit”** means a study approved by a Professional Engineer registered in New Mexico that evaluates in detail the technical and economic issues necessary to justify the investment related to the proposed ECMs or WCMs.

**“Local Public Body”** means every political subdivision of the state and the agencies, instrumentalities and institutions thereof.

**“New Mexico State Purchasing Agent” or “NMSPA”** means the purchasing agent for the State of New Mexico or a designated representative. May be used interchangeably with "State Purchasing Agent" or "SPA".

**“Pre-qualified”** means the status of an ESCO or vendor that has been selected through an RFP process, certified by EMNRD as a Qualified Provider, and has established a statewide price

agreement with the State Purchasing Agent. A pre-qualified ESCO or vendor is eligible for secondary selection processes for EPC services that Agencies may conduct.

**“Price Agreement”** means a definite quantity contract or indefinite quantity contract which requires the contractor to furnish items of tangible personal property or service to the procuring agency which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.

**“Procuring Agency”** means any state agency or local public body that chooses to procure products or services under this agreement. Other units of government, including cities, counties, school districts, institutions of higher education and other jurisdictions not subject to the procurement authority of the SPA, are authorized to buy from this agreement.

**“Products and Services Schedule”** refers to the complete list of products and services offered under this agreement and the price for each. Product and service descriptions may be amended with the prior approval of the Agreement Administrator. New products and services shall not be added to the Products and Services Schedule.

**“Qualified Provider”** means a person experienced in the design, implementation and installation of energy or water conservation measures and who meets EMNRD’s experience qualifications for energy conservation measures or the Office of the State Engineer for water conservation measures.

**“State (the State)”** means the State of New Mexico.

**“Statewide Price Agreement”** means the contract that selected Offerors would execute in order to be deemed a Qualified Provider.

**“State Purchasing Agent,”** or SPA, means the purchasing agent for the State of New Mexico or a designated representative.

**“Third-Party Fee”** means a one (1) percent fee on the pre-gross receipts tax total of the project cost.

**“Utility Cost Savings”** means the amounts saved by a Governmental Unit in the purchase of energy or water that are a direct result of energy or water conservation measures implemented pursuant to a Guaranteed Utility Savings Contract.

**“Water Conservation Measure,”** or **“WCM”**, means a training program, change in maintenance practices, or facility or landscape alteration designed to reduce water consumption or conservation-related operating costs.

**“You”** and **“your”** refers to **Selected ESCO Contractor**. **“We,” “us”** or **“our”** refers to the State of New Mexico, agencies, commissions, institutions, political subdivisions and local public bodies allowed by law to participate in the Agreement and whose accounts are created under this Agreement.

## 2. SCOPE OF WORK

Pre-qualified Energy Services Companies (ESCOs) will provide Energy Performance Contracting (EPC) services for New Mexico governmental entities (“Agencies” or “Agency”). ESCOs selected through the Request for Proposals (RFP) process and who also enter into statewide price agreements, will each be deemed Qualified Providers by the Energy Conservation and Management Division (ECMD) of the Energy, Minerals and Natural Resources Department (EMNRD). ESCOs selected through separate federal, state, or private procurement processes for EPC services are not pre-qualified.

Qualified Providers are approved to provide proposals to Agencies that may choose to utilize EPC services for upgrading facilities, fleets, and water infrastructure with energy and water conservation measures (ECMs and WCMs). Such EPC services are allowed by the Public Facility Energy Efficiency and Water Conservation Act (“EPC Statute”), as amended. The statute citation is New Mexico Statutes Annotated (NMSA) 1978, Chapter 6, Article 23 (6-23).

Eligible Agencies under the EPC Statute are state agencies, K-12 public school districts, higher education governmental entities, municipal and county governments, and other political subdivisions. EPC enables these Agencies to access financing and accomplish energy projects without using capital budgets; project financing costs are offset by energy cost savings. The Agencies and selected Qualified Providers will follow the EPC statute and program guidelines of EMNRD.

The selected ESCOs will commit to the EPC Statute and EMNRD’s program guidelines via subsequent contracts with Agencies for specific projects. The term of the Statewide Price Agreement will be four (4) years, with continuation subject to an annual review by EMNRD of each Qualified Provider’s performance. The Statewide Price Agreement will contain schedules of markups and fees as stated in the Offeror’s RFP response. Compensation to Qualified Providers for specific work projects will be detailed in the resulting contracts with Agencies to implement EPC projects.

The Qualified Provider will be required to develop proposals for potential projects. Agreements established between the Qualified Provider and the Agency, as described in the following, will incorporate current state statutes and directives that directly relate to EPC, including:

- Public Facility Energy Efficiency and Water Conservation Act [NMSA 1978, 6-23]; and
- Energy Efficiency Standards for Public Buildings, [NMSA 1978, 15-3-36].

The selection of ESCOs and subsequent contracting with Qualified Providers serves as a major step to enable Agencies to initiate EPC projects that upgrade facilities and generate avoided energy costs. There are three (3) phases possible in a complete EPC project, after an Agency’s selection of a Qualified Provider, as follows:

### ***Phase 1: Investment-Grade Energy Audit and Project Proposal***

The selected Qualified Provider and the Agency will execute the Investment-Grade Energy Audit and Project Proposal contract. This contract sets specific expectations and provides a detailed process for both the Qualified Provider and the Agency. The contract also defines the deliverables to Agency and establishes the basis for the Guaranteed Utility Savings Contract to follow. The Investment-Grade Energy Audit and Project Proposal will identify and evaluate cost-saving measures and define the proposed project scope, cost, savings, and cash-flow over the

proposed financing term. A project proposal will present bundled ECMs and WCMs that can be financed through guaranteed savings.

### ***Phase 2: Guaranteed Utility Savings Contract and Implementation***

Upon satisfactory completion of the Investment-Grade Energy Audit and Project Proposal, the Agency will have the option to execute a Guaranteed Utility Savings Contract with the Qualified Provider to implement the recommended project. The Guaranteed Utility Savings Contract will define the final agreed upon scope of work and all its associated costs and mutual responsibilities between the Qualified Provider and Agency, as well as improvement measures, the equipment and labor costs associated with them, and all guaranteed energy and maintenance cost savings. The Qualified Provider will solicit financing companies on behalf of Agency using the Financing Bid Package. A separate financing agreement will be developed including Qualified Provider payment schedules and lender financing terms and schedules. Upon execution of the Guaranteed Utility Savings Contract, the Qualified Provider proceeds to final design, construction, and commissioning of the ECMs and WCMs. Qualified provider shall inform EMNRD ECMD of contract execution and the total amount of the contract to initiate an invoice for the third-party fee.

### ***Phase 3: Performance Period***

The Performance Period of the Guaranteed Utility Savings Contract begins upon construction completion and project acceptance by Agency. The Guaranteed Utility Savings Contract may include a number of services the Qualified Provider will provide until the end of the contract, including, but not limited to, measurement and verification of savings, the savings guarantee, staff training, and contract maintenance services.

Each of the Agencies has the option to procure services of an ESCO to implement ECMs and WCMs in Agency facilities, which will avoid Agency energy costs. Selected ESCOs that establish Statewide Price Agreements will be deemed Qualified Providers for selection by any of the Agencies. The primary purposes of this Qualified Provider selection process are:

- (1) To ensure the Qualified Provider meets minimum qualifications and can implement successful EPC projects;
- (2) To provide each Agency with the opportunity to procure services of a Qualified Provider in a timely and cost-effective way;
- (3) To increase the number of successful Guaranteed Utility Savings Contracts statewide, as a means to implement comprehensive energy, transportation, and water efficiency projects.

There will be multiple ESCOs selected to become Qualified Providers. Selection will be based on the quality of proposals as determined by the evaluation committee. The number of EPC projects is not pre-determined and inclusion on a statewide price agreement is not a guarantee of engaging in EPC projects. However, it is also possible that the Qualified Provider may be engaged in developing and implementing more than one project at any point in time. The number of EPC projects moving forward for Agency facilities will depend on the subsequent proposals for potential projects, as requested by the Agencies.

## **3. PAYMENT PROVISIONS**

All payments under this agreement are subject to the following provisions.

A. Acceptance - In accordance with Section 13-1-158 NMSA 1978, the agency shall determine if the product or services provided meet specifications. No payment shall be made for any products or services until the products or services have been accepted in writing by the procuring agency. Unless otherwise agreed upon between the procuring agency and the contractor, within fifteen (15) days from the date the procuring agency receives written notice from the contractor that payment is requested for services or within thirty (30) days from the receipt of products, the procuring agency shall issue a written certification of complete or partial acceptance or rejection of the products or services. Unless the procuring agency gives notice of rejection within the specified time period, the products or services will be deemed to have been accepted.

B. Issuance of Orders - Only written signed orders are valid under this Price Agreement. A Purchase Order is the approved form for state agencies issuing Contract Orders under this Price Agreement. Other authorized government entities may utilize Purchase Orders or forms adapted by them for their own use.

C. Payment of Invoice - Upon acceptance that the products or services have been received and accepted, payment shall be tendered to the contractor within thirty (30) days after the date of invoice. After the thirtieth (30<sup>th</sup>) day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the contractor at the rate of one and one half percent (1.5 %) per month. Contractor may submit invoices for payment no more frequently than monthly. Payment will be made to the contractor's designated mailing address. Payment on each invoice shall be due within thirty (30) days from the date of the acceptance of the invoice. The Procuring Agencies and the State agree to pay in full the balance shown on each account's statement, by the due date shown on said statement.

D. Late Charges - If the State fails to pay as required above, the Contractor may assess a late fee on the unpaid balance of more than sixty (60) days. Late fees will be assessed at a rate based upon the billing address of each State or Procuring Agency account; therefore, the periodic (monthly) late fee rate shall be one and one half percent (1.5%) and the corresponding Annual Percentage Rate for the State of New Mexico will be eighteen percent (18%). No late fee on new purchases will be assessed during the billing cycle when the purchase was made.

E. Fees:

The Contractor agrees to remit an administrative reporting fee payable by check to the State Purchasing Division for an amount equal to one percent (1.00 %) of the total sales and other revenues derived from the New Mexico state agencies and local public bodies. The Contractor shall indicate the contract number 40-00000-23-00029AD and include the remittance check with the quarterly sales report.

Reports may be submitted via U.S. mail to NM State Purchasing Division or via email to: GSD.QuarterlyUsageR@gsd.nm.gov

For payment of fees through U.S. Mail or Courier Delivery:

New Mexico State Purchasing Division  
Attn: Compliance  
P.O. Box 6850  
Santa Fe, New Mexico 87502

#### **4. TERM**

THIS PRICE AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE AGENCY. This Price Agreement shall begin on date approved by the agency and end four (4) years from the date of approval.

#### **5. DEFAULT**

The State reserves the right to cancel all or any part of any orders placed under this Price Agreement without cost to the State, if the Vendor fails to meet the provisions of this Price Agreement and, except as otherwise provided herein, to hold the Vendor liable for any excess cost occasioned by the State due to the Vendor's default. The Vendor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Vendor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Vendor to meet the required delivery scheduled. The rights and remedies of the State provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this contract.

#### **6. TERMINATION**

A. For Cause - Either party may terminate this agreement for cause based upon material breach of this agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching party has not corrected the breach or, in the case of a breach which cannot be corrected in thirty (30) days, begun and proceeded in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

#### **7. AMENDMENT**

This Price Agreement may be amended by mutual agreement of the State Purchasing Agent and the contractor upon written notice by either party to the other. An amendment to this Price Agreement SHALL NOT AFFECT ANY OUTSTANDING ORDERS issued prior to the effective date of the amendment as mutually agreed upon, and as published by the State Purchasing Agent. Amendments affecting price adjustments and/or extension of contract expiration are not allowed unless specifically provided for in the proposal and contract documents.

#### **8. STATUS OF CONTRACTOR**

The contractor, and contractor's agents and employees, are independent contractors for the agency and are not employees of the State of New Mexico. The contractor, and contractor's

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 as a result of this agreement. The contractor acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.

**9. ASSIGNMENT**

A. Neither this price agreement, any orders placed under this price agreement, any interest therein, nor claim thereunder, shall be assigned or transferred by the Vendor, except as set forth in Subparagraph 10B below or as expressly authorized in writing by the State Purchasing Agent. No such assignment or transfer shall relieve the Vendor from the obligations and liabilities under this Price Agreement.

B. Vendor agrees that any and all claims for overcharge resulting from antitrust violations which are borne by the State as to goods, services, and materials purchased in connection with this bid are hereby assigned to the State.

**10. SUBCONTRACTING**

The contractor shall not subcontract any portion of any services to be performed under this agreement without written approval from the State Purchasing Agent. The following subcontractor(s) have been approved to supply resources for this agreement: case by case basis.

**11. NON-COLLUSION**

In signing this agreement, the Vendor certifies he/she has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with the offer submitted to the State Purchasing Agent.

**12. INSPECTION OF PLANT**

The State Purchasing Agent may inspect, at any reasonable time, during Contractor's regular business hours and upon prior written notice the part of the contractor's, or any subcontractor's plant or place of business, which is related to the performance of this contract.

**13. COMMERCIAL WARRANTY**

The Vendor agrees that the tangible personal property or services furnished under this price agreement shall be covered by the most favorable commercial warranties the Vendor gives to any customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to the State and are in addition to and do not limit any rights afforded to the State by any other clause of this order. Vendor agrees not to disclaim warranties of fitness for a particular purpose of merchantability.

**14. CONDITION OF PROPOSED ITEMS**

All proposed items are to be NEW and of most current production, unless otherwise specified.

**15. RECORDS OF AUDIT**

During the term of this agreement and for three years thereafter, the contractor shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by the agency, the State Auditor and other appropriate state and federal authorities. The agency 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.

#### **16. APPROPRIATIONS**

The terms of this agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the legislature of New Mexico for the performance of this agreement. If sufficient appropriations and authorization are not made by the legislature, this agreement, and any orders placed under it, shall terminate upon written notice being given by the agency to the contractor. The agency's decision as to whether sufficient appropriations are available shall be accepted by the contractor and shall be final.

#### **17. RELEASE**

The contractor, upon final payment of the amount due under this agreement, releases the agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this agreement. The contractor agrees not to purport to bind the State of New Mexico, unless the contractor has express written authority to do so, and then only within the strict limits of that authority.

#### **18. CONFIDENTIALITY**

Any confidential information provided to or developed by the contractor in the performance of this agreement shall be kept confidential and shall not be made available to any individual or organization by the contractor without prior written approval by the procuring agency.

#### **19. CONFLICT OF INTEREST**

The contractor warrants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with any performance required under this agreement. The contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

#### **20. APPROVAL OF CONTRACTOR REPRESENTATIVES**

The agency reserves the right to require a change in contractor representatives if the assigned representatives are not, in the opinion of the agency, serving the needs of the State of New Mexico adequately.

#### **21. SCOPE OF AGREEMENT**

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 understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this agreement.

#### **22. NOTICE**

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

**23. EQUAL OPPORTUNITY COMPLIANCE**

The contractor agrees to abide by all federal and state laws, 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, rules, and regulations, and executive orders of the governor of the State of New Mexico, the contractor agrees to assure that no person in the United States shall on the grounds of race, color, religion, national origin, sex, sexual preference, age or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program or activity performed under this agreement. If contractor is found to be not in compliance with these requirements during the life of this agreement, contractor agrees to take appropriate steps to correct these deficiencies.

**24. INDEMNIFICATION**

The contractor shall hold the state and its agencies and employees harmless and shall indemnify the state and its agencies and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the contractor, its agents, officers, employees or subcontractors. The contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the agency, its officers or employees.

**25. NEW MEXICO EMPLOYEES HEALTH COVERAGE.**

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to:

- 1) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2008 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed one million dollars or;
- 2) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2009 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$500,000 dollars or;
- 3) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) 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 by providing each employee with, as a minimum, the following web site link to [additonal](http://bewellnm.com) information: <http://bewellnm.com>.

D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed

against it); Contractor agrees these requirements shall apply the first day of the second month after the Offeror reports combined sales (from state and, if applicable, from local public bodies if from a statewide price agreement) of \$250,000, \$500,000 or \$1,000,000, depending on the dollar value threshold in effect at that time.

## **26. APPLICABLE LAW**

This agreement shall be governed by the laws of the State of New Mexico.

## **27. LIMITATION OF LIABILITY**

The contractor's liability to the agency, or any procuring agency, for any cause whatsoever shall be limited to the purchase price paid to the contractor for the products and services that are the subject of the agency's, or the procuring agency's, claim. The foregoing limitation does not apply to paragraph 27 of this agreement or to damages resulting from personal injury caused by the contractor's negligence.

## **28. BINDING ARBITRATION**

Any controversy or claim arising between the parties shall be settled by binding arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

## **29. INCORPORATION BY REFERENCE AND PRECEDENCE**

This agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any agency response to questions); (2) the contractor's best and final offer; and (3) the contractor's response to the request for proposals.

In the event of a dispute under this agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the agreement in reverse chronological order; (2) the agreement, including the scope of work; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the contractor's best and final offer; and (5) the contractors response to the request for proposals.

## **30. WORKERS' COMPENSATION**

The contractor agrees to comply with state laws and rules applicable to workers' compensation benefits for its employees. If the contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, this agreement may be terminated by the agency.

## **31. IMPRACTICALITY OF PERFORMANCE**

A party shall be excused from performance under this agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

## **32. 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.

**33. 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 compliance 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.

**34. PATENT, COPYRIGHT AND TRADE SECRET INDEMNIFICATION**

The contractor shall defend, at its own expense, the state and its agencies against any claim that any product or service provided under this agreement infringes any patent, copyright to trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the agency based upon contractor's trade secret infringement relating to any product or services provided under this agreement, the contractor agrees to reimburse the state for all costs, attorneys' fees and amount of the judgment. To qualify for such defense and or payment, the agency shall:

- A. give the contractor prompt written notice within 48 hours of any claim;
- B. allow the contractor to control the defense of settlement of the claim; and
- C. cooperate with the contractor in a reasonable way to facilitate the defense or settlement of the claim.

If any product or service becomes, or in the contractor's opinion is likely to become the subject of a claim of infringement, the contractor shall at its option and expense:

- A. provide the agency the right to continue using the product or service and fully indemnify the agency against all claims that may arise out of the agency's use of the product or service;
- B. replace or modify the product or service so that it becomes non-infringing; or,
- C. accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the contractor. The contractor's obligation will be void as to any product or service modified by the agency to the extent such modification is the cause of the claim.

**35. SURVIVAL**

The agreement paragraph titled "patent, copyright, trademark, and trade secret indemnification; indemnification; and limit of liability" shall survive the expiration of this agreement. Software licenses, leases, maintenance and any other unexpired agreements that were entered into under the terms and conditions of this agreement shall survive this agreement

**36. DISCLOSURE REGARDING RESPONSIBILITY**

*The Contractor and/or any of its Principals who seek to enter into a contract greater than twenty thousand dollars (\$20,000.00) with any state agency or local public body for professional services, tangible personal property, services or construction agree to disclose whether they, or any principal of their company:*

*Are presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body.*

*Have within a three-year period preceding this offer, been convicted of or had civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract; violation of Federal or state antitrust statutes related to the submission of offers; or commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property.*

*Are presently indicted for, or otherwise criminally or civilly charged by any (federal, state or local) government entity with, commission of any of the offenses enumerated in Paragraph B of this disclosure.*

*Have preceding this offer, been notified of any delinquent federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied.*

- A. Taxes are considered delinquent if both of the following criteria apply:
- 1) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
  - 2) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
  - 3) The taxpayer has within a three year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body.

Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.

The Offeror shall provide immediate written notice to the Procurement Manager or Buyer if, at any time prior to contract award, the Offeror learns that its disclosure was erroneous when submitting or became erroneous by reason of changed circumstances.

A disclosure that any of the items in this requirement exist will not necessarily result in withholding an award under this solicitation. However, the disclosure will be considered in the determination of the Offeror's responsibility. Failure of the Offeror to furnish a disclosure or provide additional information as requested will render the Offeror nonresponsive.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of an Offeror is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.

The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts. If during the performance of the contract, the contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the contractor must provide immediate written notice to the Procurement Manager or Buyer. If it is later determined that the Offeror knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the State Purchasing Agent or Central Purchasing Officer may terminate the involved contract for cause. Still further the State Purchasing Agent or Central Purchasing Officer may suspend or debar the contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the State Purchasing Agent or Central Purchasing Officer.

### **37. NOTIFICATION**

Either party may give written notice to the other party in accordance with the terms of paragraph. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three (3) business days after being mailed.

To agency: State Purchasing Agent  
State Purchasing Division  
P.O. Box 6850  
Santa Fe, New Mexico 87502

To contractor: Johnson Controls Inc., (JCI)  
Maureen Blasé  
VP/GM Sustainability Infrastructure  
5500 Midway Park Place NE  
Albuquerque, NM 87109  
Email: [maureen.g.blase@jci.com](mailto:maureen.g.blase@jci.com)  
Phone: (214) 208-1832

Either party may change its representative or address above by written notice to the other in accordance with the terms of Paragraph 37. The carrier for mail delivery and notices shall be the agent of the sender.

### **38. AMENDMENTS**

This agreement shall only be amended by written instrument executed by the parties.

### **39. SUCCESSION**

This agreement shall extend to and be binding upon the successors and assigns of the parties.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement, which will take effect on the last signature date of the required approval authorities below. Each of the signatories, below, may execute this Agreement by hard copy original, facsimile, digital or electronic signature, any of which shall be deemed to be a true and original signature hereunder.

*Maureen Blasé*

1/14/2024

By:

Date:

Maureen Blasé, VP/GM Sustainability Infrastructure, North America  
Johnson Controls, Inc.

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State to pay gross receipts and compensating taxes:

BTIN: 01-018766-00-9

**NOTE: Taxation and Revenue is only verifying the registration and will not confirm or deny taxability statements contained in this contract.**

*Ann Marie Lucero*

By:

Date:

1/16/2024

Taxation & Revenue Department

This Agreement has been approved by the State Purchasing Agent:

*[Signature]*

By:

Date:

1/16/2024

State Purchasing Agent  
State of New Mexico

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## **Appendix D - Cost Response Form**

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## APPENDIX D

### COST RESPONSE FORMS

Please include the information in Appendix D in File 2 of your proposal. Instructions calling for brief responses indicate a short response of 2-4 sentences is requested.

In the table below, provide your company's proposed Maximum Percentage of Total Project Price for this project, for each category listed. These percentages must be equal to or less than the maximums proposed in the ESCO pre-qualification process. This format is required and must be completed in its entirety. Use only the categories shown. Ranges are acceptable.

Clearly describe how incidental and ancillary work will be charged (billed hourly, billed as a markup of equipment and labor costs, etc.). Incidental and ancillary work includes but is not limited to work that is related to ensure jobsite safety and security, jobsite cleanliness and sanitation, limited demolition, and other incidental work that is necessary to enable subcontractors to perform their work in a timely manner.

Project Construction Cost Category	Maximum Percent of Total Project Price	Self-Performed or Subcontracted
<b>Pre-Construction Costs</b>		
Design and other Engineering <i>Professional architectural and engineering services; Energy modeling</i>	<b>2 – 4%</b>	<b>Both</b>
Pre-Construction Services <i>Construction management and project development services</i>	<b>1 – 3%</b>	<b>Self-Performed</b>
Other Pre-Construction Costs <i>Site visits, Owner meetings, Legal review, Accounting services, etc.</i>	<b>1%</b>	<b>Self-Performed</b>
<b>Construction Costs</b>		
Trade Subcontractors <i>Construction contractors subcontracted to ESCO; Lighting, construction, sheet metal, etc.</i>	N/A until Investment Grade Audit is completed	<b>Both</b>
Design/Build Subcontracts <i>Construction and design contractors</i>	N/A until Investment Grade Audit is completed	<b>Both</b>
Direct Purchase Equipment <i>Equipment directly purchased by ESCO</i>	N/A until Investment Grade Audit is completed	<b>Both</b>

Construction Management <i>Construction manager and site superintendent</i>	<b>5%</b>	<b>Self-Performed</b>
Project Engineering <i>Design engineer inspections; Engineering analysis</i>	<b>4%</b>	<b>Both</b>
General Conditions <i>Miscellaneous non-staffing costs; Equipment rentals, security fencing, etc.</i>	<b>5%</b>	<b>Self-Performed</b>
Construction Completion <i>Commissioning, Training, Construction M&amp;V, O&amp;M Manuals</i>	<b>1%</b>	<b>Self-Performed</b>
Other Construction Costs <i>Site visits, Owner meetings, Permits, Insurance, Bonds, Warranty Labor</i>	<b>2%</b>	<b>Self-Performed</b>

### Profit Markup

In the table below provide the maximum percentage markup that will be applied to direct purchases of equipment, material, and subcontractors for this project. The percentage must be equal to or less than the maximums proposed in the ESCO pre-qualification process. Note that overhead is included in Construction Costs - General Conditions.

	<b>Maximum % Markup</b>
Profit Percent	<b>10%</b>

If a proposal is from a joint venture partnership, include proposed maximum allowable markups in the schedule format above for each participating company.

### Contingency

Briefly describe your company's typical level of contingency budget for lighting, electrical, mechanical, controls projects, and other projects and how it proposes to apply contingency to cover changes in work scope and subcontractor change orders. Note that all unused contingency funds will revert to the Owner or be applied to additional work scope through a change order approved by the Owner.

**Contingency allotments are negotiated with the Owner based on the extent of knowledge of existing conditions, complexity of work to be performed and Owner preferences. Contingencies are not used without Owner approval and any unused amounts are returned to the Owner at the conclusion of a project.**

**Investment Grade Audit Fee**

Please refer to Figure D.1 and Table D.1 for mandatory pricing of Investment-Grade Energy Audit and Project Proposal Price Ranges

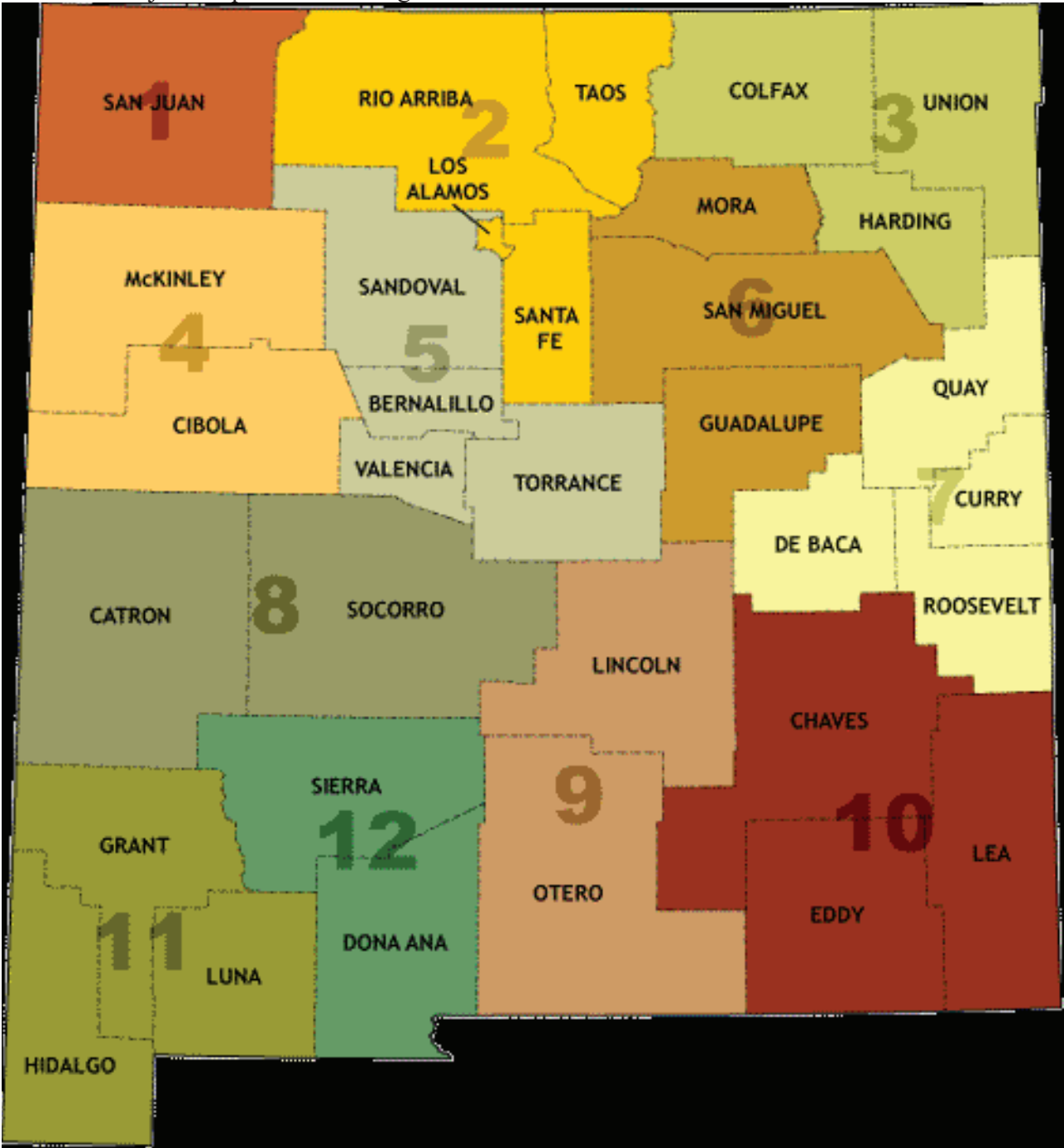


Figure D.1. GSD Purchasing Zones

Table D.1. Mandatory Pricing of Investment-Grade Energy Audit and Project Proposal.

**Pricing**

Tiered Audit Pricing based on Difficulty and Price Range (\$/sqft)	GSD Purchasing Zone	Facility Area (sqft)		
		< 25K	25-100K	100K +
One-way travel distance to Zone from Albuquerque (Central & Broadway)	Zone 5	\$0.250	\$0.225	\$0.200
	Zones 2 and 8	\$0.275	\$0.250	\$0.225
	Zones 4 and 6	\$0.300	\$0.275	\$0.250
	Zones 1, 7, 9, and 12	\$0.325	\$0.300	\$0.275
	Zones 3, 10, and 11	\$0.350	\$0.325	\$0.300

**Self-Performed Work Fees**

In the table below, provide the position descriptions and hourly rates for labor and services as performed by your company.

The purpose of this is to enable confirmation through open book pricing.

Position Description	Hourly Rate
Account Manager (Overhead)	\$0.00
Engineering Manager (Overhead)	\$0.00
Operations Manager (Overhead)	\$0.00
Administration Assistant (Overhead)	\$0.00
Accounting/Billing (Overhead)	\$0.00
Legal (Overhead)	\$0.00
Project Development Engineer	\$155.00
M&V Specialist	\$140.00
Project Manager	\$165.00
Project Superintendent	\$125.00

**Note – The above hourly rates are current average rates for each position. These hourly rates will be adjusted in future years to account for CPI and other inflation factors.**

## **Annual Costs and Fees**

### ***Measurement and Verification – Annual Fee***

Briefly describe how the post-retrofit Measurement & Verification annual fee is determined.

The Measurement and Verification Services cost is the annual cost for the services necessary after acceptance of the project to annually verify the Energy Performance Contract guarantees. The cost for the guarantee is based upon the M&V option utilized, the risk of savings failure, the field time to measure building performance, and the time to document and present the report.

**A detailed estimate is prepared that includes all engineering hours to perform the M&V field and reporting responsibilities. This estimate also includes expenses and any 3<sup>rd</sup> party cost associated with each particular M&V plan. The 3<sup>rd</sup> party cost could include but is not limited to: meter testing and calibration services, subscription fees for digital services, specialized measurements, maintenance inspections, etc.**

### ***Warranty***

Briefly describe how the warranty cost is determined.

Warranty is the burdened labor cost associated with time anticipated to be expended by ESCO staff in supporting their direct purchase equipment warranties; and/or equipment provided by subcontractors. This warranty cost may also include costs for extended equipment warranties in those cases where the required/specified equipment warranty is longer than the equipment warranty offered by the manufacturer.

**Warranty amounts are based on the complexity of the work performed, extended warranty costs from vendors/manufacturers and Owner preferences for the warranty coverages.**

**Johnson Controls warranty costs are based on the above and the amount of time and expenses estimated to provide the Owner the required warranty services.**

### ***Other***

Briefly describe any other fees and how they will be determined.

### **Equipment/Labor Cost Competition**

Briefly describe your company's process to solicit bids on equipment/labor or to ensure price/cost competition and the best value for the Owner.

**All pricing is based on Owner preferences and the best value for the Owner.**

**Unless restricted by Owner preference and/or sole source vendors, Johnson Controls policy is to solicit a minimum of three (3) bids for all costs. These bids are reviewed in detail to ensure completeness, competitiveness and presented to the Owner to mutually agree upon the best selections and project solutions.**

### **Open Book Pricing**

Briefly describe your company's approach to open book pricing and the method for maintaining cost accounting records on authorized work performed under actual costs for labor and material, or other basis requiring accounting records.

**Johnson Controls will provide full disclosure of all costs to the Owner.**

**All final detailed project cost accounting records are maintained for a period prescribed by law or required by individual contract requirements.**

### **Best Value**

Briefly describe how your approach to performance contracting delivers best value for the investment. Describe any utility rebates or other financial incentives or grants you can potentially provide and/or facilitate.

**Over the past 40 years, our team has implemented numerous performance contracts so we will not need to "reinvent the wheel" to guarantee a successful program. We self-perform almost all the development, construction management and M&V services for every project. We have national pricing agreements with all major manufacturers that help lower the overall cost of the project. We research and identify all potential utility rebates, low-rate financing and grants that are available and offer creative solutions to help our clients fund their projects.**

**The bottom line is Johnson Controls provides the best and most cost-effective solutions for our clients.**

**Certificate Of Completion**

Envelope Id: FC82D06789AA49168BA16AA1E7A3DB35

Status: Completed

Subject: Please Electronically Sign: 40-00000-23-00029AD ESCO Award 0128

Source Envelope:

Document Pages: 24

Signatures: 4

Envelope Originator:

Certificate Pages: 5

Initials: 2

Tami Concha

AutoNav: Enabled

1100 S Saint Francis Dr

Envelopeld Stamping: Enabled

Santa Fe, NM 87502

Time Zone: (UTC-07:00) Mountain Time (US &amp; Canada)

Tami.Concha@gsd.nm.gov

IP Address: 98.230.199.22

**Record Tracking**

Status: Original

Holder: Tami Concha

Location: DocuSign

1/13/2024 11:47:21 AM

Tami.Concha@gsd.nm.gov

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Storage Appliance Status: Connected

Pool: GSD

Location: DocuSign

**Signer Events****Signature****Timestamp**

Natalie Martinez

*NM*

Sent: 1/13/2024 11:51:19 AM

natalie.martinez1@gsd.nm.gov

Viewed: 1/13/2024 11:52:02 AM

Deputy Director

Signed: 1/13/2024 11:52:50 AM

New Mexico General Services

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication  
(None), Login with SSO

Using IP Address: 172.59.0.76

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Dennis Romero

*Dennis Romero*

Sent: 1/13/2024 11:52:52 AM

Dennis.Romero@gsd.nm.gov

Viewed: 1/13/2024 11:53:30 AM

Utility Engineer

Signed: 1/13/2024 11:53:35 AM

General Services Department

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication  
(None)

Using IP Address: 164.64.62.10

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Tami Concha

*TC*

Sent: 1/13/2024 11:53:37 AM

tami.concha@gsd.nm.gov

Viewed: 1/13/2024 12:17:16 PM

Procurement Specialist II

Signed: 1/13/2024 12:17:24 PM

New Mexico General Services, State Purchasing  
Division

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication  
(None)

Using IP Address: 98.230.199.22

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Maureen Blasé

*Maureen Blasé*

Sent: 1/13/2024 12:17:26 PM

maureen.g.blase@jci.com

Viewed: 1/14/2024 1:59:22 PM

VP/GM- SI NA

Signed: 1/14/2024 6:18:50 PM

Johnson Controls Inc.

Signature Adoption: Pre-selected Style



Security Level: Email, Account Authentication  
(None)

Using IP Address: 70.134.224.217

**Electronic Record and Signature Disclosure:**

Accepted: 1/14/2024 1:59:22 PM

ID: 1b3c0e82-6174-4e05-bd1c-e1f09102c3d2

Signer Events	Signature	Timestamp
<div>Ann Marie Lucero annmarie.lucero@tax.nm.gov District Mgr. State of New Mexico Taxation and Revenue Signing Group: 33300 - CRS Verification Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Accepted: 6/2/2020 2:28:54 PM ID: 4e14c1ed-cee7-47c4-9f77-dc41a9cef910</div>	<div>  Signature Adoption: Pre-selected Style Using IP Address: 164.64.133.192</div>	<div>Sent: 1/14/2024 6:18:52 PM Viewed: 1/16/2024 11:16:02 AM Signed: 1/16/2024 11:17:41 AM</div>
<div>Dorothy Mendonca dorothy.mendonca@gsd.nm.gov SPD Division Director / State Purchasing Agent General Services Department Signing Group: 35000 - State Purchasing Agent Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Accepted: 4/14/2023 7:24:59 AM ID: 51f6380f-50f7-4227-afb5-572b373dfb7c</div>	<div>  Signature Adoption: Uploaded Signature Image Using IP Address: 164.64.62.10</div>	<div>Sent: 1/16/2024 11:17:43 AM Viewed: 1/16/2024 12:33:13 PM Signed: 1/16/2024 12:33:25 PM</div>
In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	1/13/2024 11:51:19 AM
Certified Delivered	Security Checked	1/16/2024 12:33:13 PM
Signing Complete	Security Checked	1/16/2024 12:33:25 PM
Completed	Security Checked	1/16/2024 12:33:25 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

### **A. ELECTRONIC RECORD AND SIGNATURE DISCLOSURE (ERSD)**

From time to time, New Mexico General Services Department (GSD), on behalf of the State of New Mexico (SONM), may be required by law to provide you with certain written notices or disclosures. Stated below are the terms and conditions for GSD's providing you such notices and disclosures electronically through the DocuSign system. Please read this information carefully. If you are able to access this information electronically and agree to **this Electronic Record and Signature Disclosure (ERSD)**, please confirm your agreement by selecting the check-box next to "I agree to use electronic records and signatures" before clicking "CONTINUE" within the DocuSign system.

## **B. Obtaining paper copies**

At any time up to twenty (20) calendar days following your use of DocuSign to electronically sign a document, you may request a paper copy of any record provided or made available electronically to you by GSD. You will have the ability to download and print documents SONM sends you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a twenty (20) calendar day period after such documents are first sent to you. Following the twenty (20) day period, if you want GSD to send you paper copies of any such documents from GSD's office, you will be charged a \$1.00 per-page fee plus postage. You may request delivery of such paper copies from GSD by following the procedure stated in Section H, below.

## **C. Withdrawing your consent**

If you decide to receive notices and disclosures from GSD electronically, you may at any time change your mind and inform GSD you want to receive required notices and disclosures only in paper format. The procedure concerning how you may inform GSD of your decision to receive future notices and disclosures in paper format as well as withdraw your consent to receive notices and disclosures electronically is stated in Section D, immediately below.

## **D. Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed with which GSD will be able to complete certain steps in specific transactions and deliver paper copies to you. GSD will need: (1) to send the required notices or disclosures to you in paper format; and (2) wait until GSD receives your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from SONM or to electronically sign documents generated and sent to you from SONM.

## **E. All notices and disclosures will be sent to you electronically**

Unless you inform GSD otherwise according to these procedures, GSD will electronically provide you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements and other documents that are required to be provided or made available to you during the course of your electronic signature relationship with SONM. To reduce the possibility of inadvertent non-receipt, GSD prefers to provide all required notices and disclosures by the same method and to the same email or physical address that you furnish to GSD. Thus, you may receive the disclosures and notices electronically or in paper form. If you do not agree with this procedure, please inform GSD according to the procedures stated in Section I, below. Please also refer to Section D, immediately above, which states the consequences resulting from your declination of electronic delivery of notices and disclosures.

## **F. How to contact GSD:**

You may inform General Services Department (GSD) of any changes you select regarding State Purchasing Division's (SPD) electronic communications with you, to request paper copies of certain information from SPD, and to withdraw your prior consent to receive notices and disclosures electronically by emailing your request(s) to SPD at: [GSD.SPInfo@state.nm.us](mailto:GSD.SPInfo@state.nm.us)

## **G. To advise SPD of your new email address**

To inform SPD of a change in the email address to which SPD sends you notices and disclosures electronically, you must send an email to SPD at [GSD.SPInfo@state.nm.us](mailto:GSD.SPInfo@state.nm.us) and in the body of such request you must include your previous and new email addresses.

## **H. To request paper copies from SPD**

To request delivery of paper copies of electronic notices and disclosures that DocuSign and/or SPD have previously provided to you, you must send an email to SPD at [GSD.SPInfo@state.nm.us](mailto:GSD.SPInfo@state.nm.us) and in the body of your email request state your email address, full name, mailing address, and telephone number. SPD will charge you a \$1.00 per page copy fee plus postage.

## **I. To withdraw your consent with SPD**

To inform SPD that you no longer wish to receive notices and disclosures in electronic format you may:

(1) Decline to sign a document from within a signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may:

(2) Send SPD an email to [GSD.SPInfo@state.nm.us](mailto:GSD.SPInfo@state.nm.us) and in the body of your request state your email address, full name, mailing address, and telephone number.

## **J. Required hardware and software**

The minimum system requirements for using the DocuSign system may change over time. The current DocuSign system requirements may be found at:

<https://support.docusign.com/guides/signer-guide-signing-system-requirements>

## **K. Acknowledging your access and consent to receive and sign documents electronically**

To confirm that you are able to electronically access the information contained in this Electronic Record and Signature Disclosure (ERSD), please confirm that you have: (1) read this ERSD, and either: (2) you are able to print on paper or electronically save this ERSD for your future reference and access; or (3) you are able to email this ERSD to an email address where you will be able to print this ERSD on paper and/or save this ERSD for your future reference and access. Further, if you consent to receiving notices and disclosures from DocuSign and/or SPD exclusively in electronic format, then select the check-box next to “I agree to use electronic records and signatures,” before you click “CONTINUE” within the DocuSign system.

By selecting the check-box next to “I agree to use electronic records and signatures,” you confirm that:

- You have read this Electronic Record and Signature Disclosure (ERSD); and
- You can print this ERSD on paper, or you can save and/ or send this ERSD to a location where you can print this ERSD, for your future reference and access; and
- Until or unless you notify SPD as stated in this ERSD, you consent to exclusively receive through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by SPD during the course of your electronic signature relationship with SPD.