

**REQUEST FOR APPLICATIONS
FOR
COMMUNITY ENERGY EFFICIENCY DEVELOPMENT PROGRAM PROJECTS
ISSUED BY
THE STATE OF NEW MEXICO,
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT,
ENERGY CONSERVATION AND MANAGEMENT DIVISION**

I. PURPOSE

The State of New Mexico, Energy, Minerals and Natural Resources Department (EMNRD), Energy Conservation and Management Division (ECMD) is requesting applications from governmental entities for Community Energy Efficiency Development (CEED) Program projects to provide improvements to residential buildings in underserved communities in New Mexico.

Community energy efficiency projects will target the adoption of energy-efficient consumer behavior, equipment, or devices that result in a decrease in energy consumption without reducing the amount or quality of energy services. This includes health and safety measures, including those that use efficient equipment or devices to improve indoor air or drinking water quality, and equipment or electrification upgrades.

Projects will serve one or more goals of the CEED Program for residential buildings in underserved communities, including:

- reduce energy consumption;
- reduce energy-related operating costs;
- reduce the carbon intensity of energy consumption; or
- a combination of the above.

Each applicant is responsible for demonstrating how the proposed projects meet at least one of these goals.

Projects will fall under one of two types. Type 1 Projects are open to Indian nations, tribes, or pueblos; county or municipal governments; and the New Mexico Mortgage Finance Authority (MFA) to provide improvements to low-income residential buildings in an application identified underserved community. Type 2 Projects are reserved for the MFA to provide improvements to low-income residential buildings across New Mexico. All projects must take place within the state of New Mexico.

Applications must be complete and submitted by December 22, 2023.

Per Section X: Contact and Due Dates, below, prospective applicants may ask questions leading up to the Request for Applications (RFA) deadline. Prospective applicants may also register for a non-mandatory pre-application information session at 11:00 a.m. on November 3, 2023 via WebEx:

Join link:

<https://nmemnrd.webex.com/nmemnrd/j.php?MTID=mf81b0cbd03bb94c23c8c8617bc94077c>

Information session number: 2490 922 8291

Information session password: 1qQASZX887

Join by phone: 1-844-992-4726 (US Toll Free) or: +1-408-418-9388 (US Toll)

Access code: 2490 922 8291

Applications must demonstrate that the project will meet all of the criteria listed in Section VII: Application Evaluation Criteria, below, to be funded. Projects may be funded from state or federal funding sources.

II. ELIGIBILITY

Eligible applicants include Indian nations, tribes, or pueblos; county or municipal governments; and the MFA.

Project costs eligible for reimbursement may include costs of program administration, building audit or assessment costs, contractual costs such as service provider or contractor costs, partner organization costs, engineering design, environmental and regulatory assessments, equipment, supplies, construction, inspections, and monitoring/quality assurance.

III. BACKGROUND INFORMATION

The CEED Program will facilitate targeted energy efficiency improvements in underserved communities by providing block grants to local governments in partnership with community organizations. Low-income households often pay a disproportionate amount of their income on home energy costs (e.g., electricity, natural gas, and other home heating fuels), referred to as the “energy burden.” In New Mexico, individuals living below the federal poverty level pay on average 14% of their income on home energy expenses, and in some rural communities that expense can be as high as 37%. The CEED Program will build on New Mexico’s efforts for reaching underserved communities while working toward its emission reduction goals.

The Community Energy Efficiency Development Block Grant Act, NMSA 1978, Sections 62-17A-1-9 established the Community Energy Efficiency Development Program and Community Energy Efficiency Development Block Grant Fund to support residential energy efficiency and conservation in New Mexico. New Mexico Administrative Code Rule 19.1.10, Community Energy Efficiency Development (CEED) Program, establishes requirements and procedures for applying for a CEED Program grant.

IV. SCOPE OF WORK

TYPE 1 PROJECTS

Applications for Type 1 Projects are open to all eligible entities and must describe a scope of work that includes:

- A.** a description of the proposed project including the geographic area and target community, how the project intends to meet the goals of the program, and the approach for maximizing project benefits. This must include how the project will meet the specific energy savings and community benefits described in Section V: Application Package Contents, below;
- B.** a description of community partners entities plan to collaborate with and their experience working in the targeted community;
- C.** a timeline for implementation, with a work plan detailing how tasks will be executed within the allotted timeframe and by which members of the project team; and
- D.** A logic model with the proposed reporting metrics and data collection methodology; appropriateness of measures and deliverables created and proposed for tracking and collecting data, and project impact estimates.

TYPE 2 PROJECTS

Applications for Type 2 projects are reserved for the MFA and must describe a scope of work that includes:

- A.** a description of the proposed project including the geographic area(s), how the project meets the goals of the program, and the approach for maximizing project benefits. This must include how the project will meet the specific energy savings and community benefits described in Section V: Application Package Contents, below;
- B.** a coordination plan with information on how the project would support infrastructure improvements for affordable housing; how the project would complement and not duplicate other energy efficiency programs in the state, and how energy efficiency improvements to the residential housing units will help to reduce the energy burden of low-income households that may not qualify for other energy efficiency programs in the state;
- C.** a logic model with the proposed reporting metrics and data collection methodology; appropriateness of measures and deliverables created and proposed for tracking and collecting data, and project impact estimates; and
- D.** a timeline for implementation, with a work plan detailing how tasks will be executed within the allotted timeframe and by which members of the project team.

V. APPLICATION PACKAGE CONTENTS

Applicants must submit their application packages electronically via an online application form using ECMD's Submittable webpage using this address:

<https://emnrd-ecmd.submittable.com/submit>

A. Letter of Transmittal

Application packages must include a letter of transmittal that:

- identifies the name, title, telephone number, and email address for the applicant entity and person(s) authorized to negotiate a contract on applicant's behalf;
- identifies the name, title, telephone number, and email address of the person(s) to be contacted for clarification related to the contents of an application;
- accepts the terms and conditions of this RFA and its requirements;
- acknowledges receipt of all amendments to this RFA (if applicable); and
- is signed by the person(s) authorized to contractually obligate the entity.

B. Project Narrative

Application packages must include a narrative and materials related to the scope of work appropriate for the project as described in Section IV: Scope of Work, above. In addition, the application must include a narrative description of the project's alignment with the CEED Program's goals. Project narratives must describe how the project will improve residential low-income housing in New Mexico by:

1. Type 1 Projects

i. Project Description:

This section of the application must clearly describe:

- a. the community energy efficiency project that is being proposed and the project approach;
- b. metrics/measurables/data collection method;
- c. the selected geographic "block", areas or property addresses where the project will take place;
- d. data detailing the justification for geographic selection;
- e. how the project would support infrastructure improvements for affordable housing; and
- f. how the project would provide energy efficiency improvements to residential buildings in an underserved community and outlines the energy efficiency improvements to residential housing units.

ii. Community Description

This section of the application must clearly identify the targeted underserved community and describe the energy-related needs of the community and the benefits this community would receive if the proposed project was implemented.

iii. Participant Eligibility Requirements

Applicants must demonstrate the ability to determine which participant households within the proposed community meet the eligibility criteria. Applicants are responsible for determining if and certifying that a household is eligible for this program. Applicants must certify that the households receiving services have been verified for eligibility prior to the commencement of project work.

2. Type 2 Projects

i. Project Description

This section of the application must clearly describe:

- a. the community energy efficiency project that is being proposed;
- b. the selected geographic areas or property addresses where the project will take place;
- c. how the project would support infrastructure improvements for affordable housing that would complement and not duplicate other energy efficiency programs in the state;
- d. the energy efficiency improvements to residential housing units; and
- e. how energy efficiency improvements to the residential housing units will help to reduce the energy consumption, burden, or carbon intensity of energy consumption of low-income households that may not qualify for other energy efficiency programs in the state.

ii. Participant Eligibility Criteria

As established by the MFA, following current federal programmatic requirements.

C. Logic Model

1. Application packages must include a logic model that describes proposed reporting metrics and data collection methodology; appropriateness of measures and deliverables created and proposed for tracking and collecting data.
2. This must also include the average impact by household, the aggregated impact of the project, and metrics which will determine success in implementation. Metrics proposed in applications may be tailored to the individual project.

D. Timeline

1. Application packages must include a timeline showing how the project will be completed, including major milestones.

2. Applications must include a work plan detailing how tasks will be executed within the allotted timeframe and by which members of the project team.

E. Budget

Application packages must include a budget detailing anticipated expenditures showing how work will be compensated, additional sources of funding including a list of non-program funding or in-kind resources, and how these resources will be applied to the project, if applicable. Applicants must indicate areas for budget reduction potentials in the event a project is not selected for full funding. Administrative costs are capped at 15%.

F. Partnership Descriptions

Application packages must include:

1. descriptions of proposed community partner(s) with experience in the area(s) in which the project will take place, outlining scope of collaboration and experience of partner in working with the targeted underserved community, and may include letter(s) of support; and
2. descriptions of proposed service providers(s) with experience in the area(s) in which the project will take place, outlining any commitment by provider to employ apprentices from a registered apprenticeship program that promotes diversity or to provide paid internships to persons from the targeted underserved community, and may include letter(s) of support.

G. Proof of Technical Capabilities

Application packages must include proof of administrative and fiscal readiness, including a statement on how the entity prevents fraud, waste, and abuse of funding. It must also include how the applicant will fund the project if the CEED grant will not fund the entire project. Include applicant entity's key technical capabilities for completing the work.

H. Certification

Application packages must include a completed, signed Statement of Assurances Form (Attachment 2).

VI. ADDITIONAL REQUIREMENTS

A. Federal Funding Monitoring and Reporting Requirements

1. ECMD may apply funds available through the U.S. Department of Energy (DOE) and therefore, all undertakings are subject to provisions of Section 106 (36 C.F.R. Part 800) of the National Historic

Preservation Act (NHPA) and related laws and regulations of the National Environmental Policy Act (NEPA).

2. Federal regulations require DOE to monitor each grant recipient, and grantees to monitor each project, program, subrecipient, function, or activity supported by federal funds to ensure compliance with all federal rules and regulations.
3. Prohibited uses of DOE funding include (10 C.F.R. Section 420.18): purchase of land, buildings, or structures, or any interest therein.

B. General Reporting Requirements

1. All selected applications are required to submit progress and expenditure reports, including a final report, in accordance with the requirements of their respective Governmental Services Agreement (GSA) (Attachment 1).
2. ECMD reserves the right to structure reporting requirements on a project-specific basis.

C. Statement of Compliance

All selected applicants must provide a statement to demonstrate acknowledgement of compliance with all applicable federal, state, and local environmental laws, including but not limited to the Cultural Properties Act, NMSA 1978, Sections 18-6-1 through 18-6-17, and the Endangered and Protected Species Act, NMSA 1978, Sections 17-1-14 through 17-5-21.

D. Maintenance and Inspection of Public Records Act/Confidential Information

All information obtained regarding the project, including pre-applications, applications for funding, and reports are subject to disclosure, in response to requests received under provisions of the New Mexico Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 to 14-2-12. Information that could reasonably be considered to be proprietary, privileged, or confidential commercial or financial information must be identified as such. EMNRD will maintain the confidentiality of that information only to the extent permitted by law.

E. Statement of Authority

1. Indian nations, tribes, or pueblos: Prior to ECMD's final approval of an application, an applicant that is an Indian nation, tribe, or pueblo must provide ECMD with a copy of a resolution enacted by the Indian nation, tribe, or pueblo that provides approval for a specific CEED Program grant and must include in the resolution the terms and conditions of the grant approved by ECMD.
2. Counties or municipalities: Prior to ECMD's final approval of an application, an applicant that is a county or municipality must provide a copy of the ordinance enacted by the county or municipality that provides the county's or municipality's formal approval for a specific

CEED Program grant and must include in the ordinance the terms and conditions of the grant approved by ECMD.

3. MFA: Prior to ECMD’s final approval of an application, the MFA must provide ECMD with formal approval of the MFA to accept a specific CEED Program grant. The MFA shall coordinate with the ECMD on work done pursuant to CEED Program grants in the state to implement energy efficiency measures.

F. Variances

Written requests for a variance from any of the provisions of this RFA must:

- i. state the reasons for the variance request;
- ii. identify each of the sections of this RFA for which a variance is requested;
- iii. describe the effect the variance will have, if granted, on compliance with this RFA;
- iv. describe how granting the variance will not compromise, or will further, the purposes of this RFA; and
- v. indicate why the proposed variance is a reasonable alternative to the requirements of this RFA.

VII. APPLICATION EVALUATION CRITERIA

No.	DESCRIPTION OF EVALUATION CRITERION	<u>TYPE 1:</u> Points Available	<u>TYPE 2:</u> Points Available
1.	<p>Capability to meet the scope of work described. ECMD will consider the:</p> <ul style="list-style-type: none"> • project description and approach; • project timeline and work plan; • appropriateness of measures/deliverables; • metrics created and proposed for tracking and collecting data; • qualifications of project team members; and • ability to complete the project financially. 	18	18
2.	<p>Alignment with CEED Program goals. ECMD will consider the:</p> <ul style="list-style-type: none"> • estimated reduction of energy use that will come from implementation of the proposed measures; • estimated reduction of energy cost that will come from implementation of the proposed measures; and 	5	5

	<ul style="list-style-type: none"> • estimated reduction in carbon intensity of energy consumption from implementation of the proposed measures. 		
3.	Partnership Experience. ECMD will consider the experience of each community partner and service provider identified in the application in working with the targeted underserved community.	2	1
4.	Workforce impact. ECMD will consider whether the partners identified in the application employ apprentices from a registered apprenticeship program that promotes diversity or if they provide paid internship to persons from the targeted underserved communities.	2	1
5.	Geographic diversity. ECMD will consider the degree to which the project promotes geographic diversity of the portfolio of community energy efficiency projects.	0	2
6.	Underserved community benefits. ECMD will consider the degree to which the project benefits an underserved community, including: <ul style="list-style-type: none"> • maximizing benefits in community; • non-energy benefits, including health, etc.; and • value of the project as a demonstration project to provide data for the effectiveness of implementing similar projects elsewhere. 	6	6
7.	Budget. ECMD will consider the total proposed budget as well as the average amount requested per household, prioritizing applications which propose to maximize project benefits in the community to the greatest extent feasible.	12	12

VIII. EVALUATION PROCESS

The application evaluation process will follow the steps listed below:

- A. upon receipt of applications, the Evaluation Team will document the contents of competitive sealed applications and review for eligibility, completeness, and compliance with the mandatory requirements stated within this RFA;
- B. in the event that the application is incomplete or clarification of the application content is needed, the applicant will be notified by the Evaluation Team. The applicant must then submit the information requested in the timeframe established by ECMD;
- C. the Evaluation Team will evaluate responsive applications based on the criteria in Section VII: Application Package Criteria, and will select responsive applications with the highest total weighted scores as finalists for

- award; and
- D. applications deemed non-responsive or applicants that do not respond in the established timeframe may be disqualified.

IX. AWARD

- A. Approval will be granted in two stages. Preliminary approval requires an application submission and ECMD selection. Final approval requires an additional Statement of Authority submission as required in Section VI: Additional Requirements, before full ECMD approval may be granted.
- B. EMNRD may award multiple contracts under the terms of the attached draft GSA (Attachment 1) and this RFA. Any GSA awarded as a result of this RFA shall not be binding until approved by EMNRD and the funds encumbered by the Department of Finance and Administration. Any GSA awarded as a result of this RFA may last up to three years, depending on Applicant need and project complexity.

X. CONTACT AND DUE DATES

Questions concerning this RFA are to be submitted electronically or in writing to:

Dana Howard
EMNRD – ECMD
1220 S. St Francis Drive
Santa Fe, NM 87505
(505) 395-0855
dana.howard@emnrd.nm.gov

ECMD will only respond to written questions regarding this RFA. Questions need to be clearly labeled and cite the section(s) in the RFA or other document which form the basis of the question.

Written answers to those questions will be posted on the EMNRD–ECMD website as they arrive:

<https://www.emnrd.nm.gov/ecmd/about-us/requests-for-proposals-applications>

Applicants must submit one application to:

<https://emnrd-ecmd.submittable.com/submit> by 5:00 p.m. MST on December 22, 2023.

XI. NOTICES

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

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

EMNRD may cancel this RFA and reject any and all applications when it is in the State of New Mexico's best interests.

EMNRD may conduct discussions with applicants who submit applications but may also accept applications without such discussions.

The 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.

ATTACHMENT 1

**STATE OF NEW MEXICO,
GOVERNMENTAL SERVICES AGREEMENT
BETWEEN THE
STATE OF NEW MEXICO,
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
AND
ENTITY**

THIS GOVERNMENTAL SERVICES AGREEMENT (Agreement) is made and entered into by and between the State of New Mexico, Energy, Minerals, and Natural Resources Department (EMNRD) and (Insert Entity name. Remove this instruction.) (Entity).

THE PARTIES MUTUALLY AGREE:

1. Scope of Work: Entity shall:

(Insert description of work. Remove this instruction.)

Entity shall also provide brief written progress reports to EMNRD on a (*weekly, bi-weekly, monthly, quarterly, annual, with each request for payment/reimbursement or some other time frame*) basis. (All contracts must have reporting requirements, or the program manager must justify the lack of reports in a written memo to the file for auditing purposes.)

2. Compensation: (For paragraph A, select option 1, 2, 3, or 4)

Option 1: Work Product. If you choose this option, remove this Option 1 heading and remove the optional Paragraph As below.

A. EMNRD shall pay Entity for services satisfactorily performed pursuant to the Scope of Work and as specified below. This amount shall not exceed _____ (\$ _____), including New Mexico gross receipts taxes, and any travel (Note: If you pay travel, the amount needs to be set out as a separate deliverable), if necessary, pursuant to Paragraphs B and 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. Remove this instruction)

This amount is a maximum and not a guarantee that the work assigned to be performed by Entity under this Agreement shall equal the amount stated herein or the amounts state per task. The parties do not intend for the Entity to continue to provide services without compensation when the total compensation amount is reached. Entity is responsible for notifying EMNRD when the services provided under this Agreement reach the total compensation amount. In no event shall the Entity be paid for services provided exceeding the total compensation amount without

this Agreement being amended in writing prior to those services exceeding 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 2: Lump Sum Amount Upon Completion of All Work. If you choose this option, remove Paragraph B of this Compensation Section as well and re-letter successive paragraphs accordingly. Remove the paragraph above it. Remove this Option 2 heading.

A. Upon satisfactory completion of services, EMNRD shall pay Entity for services satisfactorily performed pursuant to the Scope of Work in an amount not to exceed _____ (\$ _____), which amount includes New Mexico gross receipts taxes, and any travel, if necessary, pursuant to Paragraphs B and C of this Compensation Section. In no event shall the Entity be paid for services provided exceeding the total compensation amount without this Agreement being amended in writing prior to those services exceeding 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, remove this Option 3 heading and the paragraphs above it.

A. EMNRD shall pay Entity for services rendered and amount not to exceed _____ (\$ _____) per (hour, day, week, month), such compensation not to exceed _____ (\$ _____) in total, which amount includes gross receipts taxes and travel as shown in Paragraphs B and C of this Compensation Section. EMNRD shall reimburse Entity for the cost of materials necessary under this Agreement for an amount not to exceed _____ (\$ _____). This amount is a maximum and not a guarantee that the work assigned to Entity under this Agreement to be performed shall equal the amount stated herein. 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. Payment shall not relieve the Entity of any unperformed obligations under the Scope of Work.

B. EMNRD shall pay such travel expenses as may be incurred in, and that are necessary for, this Agreement's performance at the rates established in the Per Diem and Mileage Act, NMSA 1978, Sections 10-8-1 *et seq.* as implemented by the current Department of Finance and Administration (DFA) rule and the current EMNRD travel policy.

C. Entity shall be responsible for paying New Mexico Governmental Gross Receipts taxes levied on amounts payable under this Agreement.

D. Entity must submit detailed invoices accounting for all services performed, and expenses incurred. Invoices evidencing the propriety of each claim for payment must be supported by approved purchase order. (When compensation is based on hourly rates, Entity shall also provide documentation of hours expended on the services provided.) If EMNRD finds that the invoice services, or expenses are

not acceptable, within 30 days of receipt of written notice from Entity that payment is requested for services received, EMNRD shall provide Entity a letter of exception explaining the defect or objection to the invoice, services, or expenses, and outlining steps Entity may take to provide remedial action. Upon certification by EMNRD that the invoice, services, or expenses have been received and accepted, EMNRD shall tender payment to Entity 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.

Option 4: Advance of Funds. If you choose this option, remove all the previous choices. Remove this Option 4 heading.

A. Within XX days following this Agreement's effective date, EMNRD shall transfer to Entity _____ (\$ _____), which shall include New Mexico Governmental Gross Receipts Taxes, for completion of the Tasks described in the Scope of Work above. Payment shall not relieve Entity of any unperformed obligations under the Scope of Work.

B. Upon expiration or termination of this Agreement, if either party has property or funds in its possession belonging to the other, it shall return the property or funds in proportion to the parties' original contribution.

C. Entity shall be responsible for paying New Mexico Governmental Gross Receipts taxes levied on amounts payable under this Agreement, if applicable.

3. Term: This Agreement becomes effective when executed by an authorized representative of Entity and of EMNRD and when DFA encumbers funds for this Agreement. It shall terminate on (Insert date) unless earlier terminated pursuant to Section 4, Termination, or Section 5, Appropriations, below.

4. Termination: Either party may terminate this Agreement upon written notice delivered to the other at least 10 days prior to the intended termination date. By such termination, neither party may nullify or avoid any obligation required to have been performed prior to termination.

5. Appropriations: This Agreement's terms are contingent upon the New Mexico State Legislature (option - and insert name of federal funding agency) granting sufficient appropriation and authorization. If sufficient appropriation or authorization is not granted, EMNRD may terminate this Agreement, or in the alternative suspend performance pending approval of sufficient appropriation or authorization, upon written notice from EMNRD to Entity. EMNRD's decision as to whether sufficient appropriations are available shall be at its sole and absolute discretion and shall be final, binding, and accepted by Entity.

Option: If Entity is another state agency, revise this section to reflect Entity is not an EMNRD employee. Remove this instruction.

6. Status of Entity: Entity and its agents and employees are independent contractors performing professional services for EMNRD and are not employees of the State of New Mexico. Entity 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 as a result of this Agreement. Entity acknowledges that all sums received hereunder are reportable by the Entity for tax purposes, including without limitation, self-employment and business income tax. Entity agrees not to purport to bind the State of New Mexico unless the Entity has express written authority to do so, and then only within the strict limits of that written authority.

7. Assignment: Entity 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: Entity shall not subcontract any portion of the services to be performed under this Agreement or obligate itself in any manner to any third party, with respect to any rights or responsibilities under this Agreement, without EMNRD's prior written approval. EMNRD may disallow costs incurred by the Entity in relation to a subcontract if Entity does not obtain prior written approval.

Option: Include A and B you are using federal funds for the work of this contract. Remove this instruction.

A. Entity shall comply with 2 C.F.R. 200.318 through 200.326 for procurement of property or services conducted pursuant to this Agreement.

B. Any contract shall include all provisions necessary to allow Entity to meet its obligations and requirements under this Agreement and all provisions required by law.

Option: Include subparagraph below if subcontractor will be reimbursed for travel expenses. Remove instruction.

C. Travel expense reimbursement requested for subcontractors, if applicable, shall be reimbursed in accordance with rates established in the Per Diem and Mileage Act, NMSA 1978, Section 10-8-1 *et seq.*, as implemented by the current DFA Rule and EMNRD Travel Policy.

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 Entity in the performance of this Agreement shall be kept confidential and shall not be made available by Entity to any individual or organization without EMNRD's prior written approval.

11. Product of Services; Copyright: All materials developed or acquired by Entity under this Agreement shall become the State of New Mexico's property and be delivered to EMNRD no later than this Agreement's expiration date. Nothing Entity produces, in whole or in part, under this Agreement shall be the subject of a copyright application or other claim of ownership by or on behalf of Entity.

12. Conflict of Interest; Governmental Conduct Act: Entity warrants that it presently has no interest and that it shall not acquire any interest, direct or indirect, which would conflict in any manner with performance or other services required under this Agreement. Entity certifies that all applicable provisions of the requirements of the Governmental Conduct Act, NMSA 1978, Sections 10-16-1 through –18, including provisions related to contracting with, or employing, public officers, legislators, state employees, or former state employees, have been followed.

13. Amendment: This Agreement shall not be altered, changed, or amended except by written instrument executed and approved by the parties hereto.

14. 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, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless as embodied in this Agreement.

15. Penalties for Violation of Law: The 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.

16. Equal Opportunity Compliance: Entity 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, the Entity 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 Entity is found not to be in compliance with these requirements during the life of this Agreement, Entity agrees to take appropriate steps to correct these deficiencies.

17. 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, Section 38-3-1(G). By execution of this Agreement, Entity 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 term of this Agreement.

18. Records and Audit:

A. Entity shall maintain detailed time and expenditure records that indicate the date, time, nature, and cost of services rendered during the Agreement's term and effect and retain them until six years after the termination date specified in Section 3, Term. These records shall be maintained and available within the State of

New Mexico if the Entity has an office within the state; otherwise, Entity shall make such records available to EMNRD within 10 days upon EMNRD's request. During this time, such records shall be subject to inspection by EMNRD, DFA, and the State Auditor (and insert name of federal funding agency). Entity 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. Payment under this Agreement shall not foreclose EMNRD's right to recover excessive or illegal payments. 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 related to this Agreement for which exception is under consideration by insert name of 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 must determine whether your provider is a subrecipient or a contractor. If you determine your provider is a subrecipient, you need to include the following paragraph in your contract. If you determine your provider is a contractor, the requirements do not apply and you will remove this this paragraph. Delete this instruction.

B. If Entity receives \$750,000 or more in federal funding from all sources in the aggregate in a fiscal year, Entity's financial records involving services and procurement under this Agreement shall be audited annually pursuant to all federal, state, and local government audit requirements, and in accordance with the Single Audit Act Amendments of 1996, 2 C.F.R. 200, Subpart F – Audit Requirements, OMB Circular Compliance Supplement and Government Auditing Standards, as prescribed by the Single Audit Act of 1984, or any subsequent OMB Circular. Entities who do not meet the \$750,000 audit threshold (Tier 7), must complete the State of New Mexico – Office of the State Auditor Certification Form for Tier 1 and Tier 2, or the Office of the State Auditor Agreed Upon Procedures (Tiers 3-6) in accordance with the Audit Act, NMSA 1978, Sections 12-6-1 through 12-6-14, and 2.2.2.16 NMAC, Annual Financial Procedures Required for Local Public Bodies with Annual Revenues Less than Five Hundred Thousand Dollars. To comply with state audit requirements, Entities shall have one of the above-mentioned Forms or Agreed Upon Procedures on file with the Office of the State Auditor. Entity 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.

19. Liability: Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred with this Agreement is subject to the immunities and limitations of the Tort Claims Act, NMSA 1978, Sections 41-4-1 *et seq.*, as amended.

20. Procurement, Utilization, and Disposition of Property: Entity shall report acquisition of any capital property (property with an expected life of at least one year) to EMNRD within one month following the acquisition. If upon termination of this Agreement Entity has any property in its possession belonging to EMNRD, Entity shall account for the property and dispose of it as EMNRD directs. (Option: If federal funding is involved include the following statement. Otherwise remove it and this instruction) All property acquired by the Entity or procured under this Agreement shall be used and disposed of in accordance with [insert federal funding agency's

name] regulations governing disposal of property.

21. 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.

22. 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 waiver of a specified right by a party shall be effective to waive any other rights.

23. Notice: Except as otherwise specified herein, all notices hereunder shall be in writing) and shall be given to the relevant party at its address set forth below, or such other address as such party may hereafter specify by notice to the other given by courier, by United States certified or registered mail, or by telecommunication device capable of creating a written record of such notice and its receipt.

To EMNRD:

(insert position title and address of project manager)

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

To the Entity:

(insert contact information)

To Risk Management Division:

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

24. Authority: If Entity is other than a natural person, the individual(s) signing this Agreement on behalf of Entity represent and warrant that he or she has the power and authority to bind Entity, and that no further action, resolution, or approval from Entity or any other entity is necessary to enter a binding contract.

Option: Include the following if acknowledgment required. If not, remove this section and renumber successive accordingly. Remove this instruction.

25. Acknowledgment: Entity shall acknowledge EMNRD (option - and insert name of federal funding agency) as a co-sponsor and funding source in all news releases, programs, proceedings, and related publicity/publications for the project.

26. Attorney's Fees and Costs: Entity agrees that if a court of competent jurisdiction finds Entity has breached this Agreement, or amendments hereto, or to have committed any tortious act relating to this Agreement's scope, EMNRD may recover from Entity reasonable attorneys' fees and costs in connection with litigation brought to obtain the judicial determination and to collect any judgment.

27. Minimum Wage Rate: If applicable, Entity 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 for hiring and performing of this Agreement.

28. Compliance with Law and Funding Source Conditions:

A. Entity shall comply with all applicable state and federal statutes, regulations, or rules, including without limitation those imposed as a consequence of funding pursuant to this Agreement.

(If you are using federal funds to pay for the work of this agreement, the following clauses must be included. If you are using non-federal funding, delete the clauses and this instruction.)

B. Compliance with use of Minority Business Enterprises (MBEs) and Women's Business Enterprises (WBEs) - Entity shall take affirmative steps to assure that MBEs and WBEs are used when possible as sources of supplies and services. The affirmative steps shall include the following:

- 1) including qualified MBEs/WBEs on solicitation lists;
- 2) assuring that MBEs/WBEs are solicited once they are identified;
- 3) when economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum MBE/WBE participation;
- 4) where feasible, establishing delivery schedules which will encourage MBE/WBE participation;
- 5) encouraging use of the services of the U.S. Department of Commerce's Minority Business Development Agency and the U.S. Small Business Administration to identify MBEs/WBEs, as required; and
- 6) if any subcontracts are to be let, requiring the subcontractor to take the affirmative steps listed above.

C. Compliance with Trafficking Victims Protection Act of 2000 - Entity, Entity's employees, subcontractors, and subcontractors' employees shall not:

- 1) engage in severe forms of trafficking in persons during this Agreement's term;
- 2) procure a commercial sex act during this Agreement's term; or

3) use forced labor in the performance of this Agreement.

D. Compliance with NMSA 1978, Section 66-7-374, Texting While Driving - Entity and Entity's employees shall not read or view a text message or manually type on a handheld mobile communication device for any purpose while driving a motor vehicle in connection with this Agreement, except to summon medical or other emergency help, or unless that device is an amateur radio and the driver holds a valid amateur radio operator license issued by the Federal Communications Commission.

E. In the event this Agreement is funded with federal monies, Entity shall comply with 2 C.F.R. 200.318 through 200.326 for procurement of property or services conducted pursuant to this Agreement.

F. In the event this Agreement is funded with federal monies and Entity wishes to enter into an agreement with a small business firm or non-profit organization regarding the substitution of parties, assignment, or performance of experimental, developmental, or research work under this Agreement, Entity shall comply with the requirements of 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements" and any implementing regulations issued by the (insert name of federal funder).

G. Entity shall not award subcontracts to parties listed on the government-wide exclusions in the federal System for Award Management (SAM), in accordance with OMB guidelines that implement federal Executive Orders 12549 (3 C.F.R. part 1986, Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), "Debarment and Suspension." SAM exclusions contain the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regularity authority other than Executive Order 12549.

H. If the value of this Agreement exceeds \$100,000, Entity shall comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352) regarding the limitations of use of appropriated funds to influence certain federal contracting and financial transactions.

I. If this Agreement is valued at more than \$150,000, Entity shall comply with all applicable standards orders or requirements issued under the federal Clean Air Act (42 U.S.C. § 7401 *et seq.*); Clean Water Act (33 U.S.C. § 1251 *et seq.*); Executive Order 11738 (Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act With Respect to Federal Contracts, Grants, or Loans); and U.S. Environmental Protection Agency (EPA) regulations.

Option: If agreement is with a state agency do not include the following provision because all state agencies are covered by Risk Management Division. Remove this Section (and this instruction) and renumber successive sections accordingly. If agreement is with a county, municipality, state university, or public school, determine whether it has insurance coverage. If it does, keep the following. If the county, municipality, state university, or public school does not have coverage, discuss the situation with legal as to how it should be addressed. Remove these

instructions.

29. Insurance Coverage: Entity shall provide EMNRD a statement indicating that the activities described in the Scope of Work are covered by insurance as set forth below, secured in accordance with any method allowed by applicable law, including self-insurance, pooling of self-insured reserves, or insurance provided by a third party, prior to commencing work under this Agreement. Entity shall maintain continuous coverage of the activities described in the Scope of Work, so long as this Agreement is in effect. Failure to maintain such coverage is reason for immediate termination of this Agreement. Entity shall notify EMNRD prior to cancellation or expiration of any insurance required under this Agreement.

A. Worker's Compensation protection that complies with the requirements of the Worker's Compensation Act, NMSA 1978, Sections 52-1-1 *et seq.*, if applicable. If the Entity fails to comply with the Workers Compensation Act and applicable rules when required to do so, EMNRD may terminate this Agreement.

B. Comprehensive public liability protection covering property damage and personal injury liability that may arise under this Agreement and any amendments hereto, in amounts equal or greater than liability limits set forth in NMSA 1978, Sections 41-4-19, as it may be amended from time to time.

IN WITNESS WHEREOF, the parties hereto have herein below executed this Agreement.

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

By: _____
Cabinet Secretary or Designee

Date: _____

ENTITY NAME

By: _____
Authorized Representative Signature

Date: _____

Printed Name and Title

ATTACHMENT 2

STATEMENT OF ASSURANCES FORM

Each Applicant MUST complete this form and submit it with the application, otherwise EMNRD will deem the application as non-responsive.

By signing this form below, Applicant acknowledges and agrees to the following:

This RFA does not commit the State of New Mexico (State) to pay any costs incurred in the in the preparation or submission of this application. Any cost incurred by the Applicant in developing an application response shall be borne solely by the Applicant. Applicant understands that that Applicant's application shall become part of the official file on this matter without obligation to the State. Issuance of this RFA does not constitute an award commitment on the part of the State.

Applicant shall examine all contract documents, noting particularly all stipulations that in any way affect contract work. Failure of an Applicant 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.

Applicant represents and warrants to the state that Applicant has the staff, facilities, and competence to furnish the required services. The state may investigate Applicant's adequacy of the staff, facilities, and competence. For this purpose, representatives of the State may inspect Applicant's facilities, equipment, etc., and interview staff.

To receive consideration, Applicant's application must be signed by an officer having the authority to bind Applicant.

Applicant agrees to comply with all relevant federal and state laws and regulations or rules.

New Mexico Employees Health Coverage:

If Applicant 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 RFA, Applicant agrees, by submitting an application, 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 Applicant and the state exceed \$250,000.

Applicant 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.

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

Applicant Signature

Date

Applicant's Printed Name and Title