

REQUEST FOR PROPOSALS
FOR PROVIDING AS-NEEDED ENVIRONMENTAL AND CULTURAL RESOURCE
COMPLIANCE SERVICES
THROUGHOUT NEW MEXICO
ISSUED BY THE STATE OF NEW MEXICO, ENERGY, MINERALS AND NATURAL
RESOURCES DEPARTMENT

I. PURPOSE OF THIS REQUEST FOR PROPOSALS

The Energy, Minerals and Natural Resources Department (EMNRD) is seeking proposals from firms or organizations that demonstrate expertise and experience to provide as-needed environmental and cultural resource compliance services for projects at EMNRD sites and facilities throughout New Mexico. Work shall be assigned as needed by EMNRD acting on behalf of the Mining and Minerals Division, Abandoned Mine Land (AML) Program and may include fieldwork necessary to complete the requested compliance services. AML projects may include work on coal and non-coal mines.

Typical projects, more fully defined below in this Request for Proposals (RFP), may include but are not limited to: biological assessments and evaluations; preparation of biological assessment reports; preparation of permit applications (e.g. Clean Water Act, Section 404); environmental compliance evaluations and wildlife exclusions, including bats, and migratory bird survey work for pre-construction and construction needs; preparation of environmental assessments and categorical exclusions; cultural resource inventories and reports; historic architectural surveys and reports; archaeological test excavations and full-scale archaeological excavations; archival and ethnographic research; archaeological monitoring; and public outreach on the activities and findings of environmental and cultural resource investigations.

EMNRD has approximately two million available to support any Professional Services Agreements (PSAs) that may be entered into as a result of this RFP. EMNRD may award multiple agreements as a result of this RFP. Any procurement which may result from this RFP is valid for one year from date of issue as indicated in Section VIII, Contact Person and Due Dates, below.

The AML Program will conduct a **non-mandatory** pre-proposal webinar conference for potential Offerors at 11 a.m. Mountain Standard Time, on August 28th, 2025 to provide potential Offerors with an opportunity to be briefed on this procurement and ask questions about the procurement process and work requirements. Please contact the MMD Contact Person listed under Section VIII to request a meeting invitation.

II. BACKGROUND INFORMATION

In 1977, Title IV of the federal Surface Mining Control and Reclamation Act (SMCRA) established the Abandoned Mine Reclamation Fund. The primary mandate of the New Mexico AML Program, initiated in 1982, is to safeguard the public from physical hazards and environmental damage associated with abandoned mines. The AML Program is funded through the Office of Surface Mining Reclamation and Enforcement (OSMRE), U.S. Department of the Interior, therefore, all undertakings are subject to provisions of Section 106 (36 C.F.R. Part 800)

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

III. SCOPE OF WORK

Where applicable, EMNRD will obtain consent from landowners for the successful Offeror(s) to access project sites before assigning work via Task Orders.

A. Task Orders

EMNRD shall identify proposed projects for which environmental or cultural resource compliance services are necessary and Successful Offeror(s) may be assigned work on an “as-needed” basis under Task Orders approved and issued by EMNRD. The successful Offeror(s) shall acquire and furnish all permits, materials, laboratory facilities, services, equipment, administration, and any other instruments or equipment necessary to successfully perform the task(s) requested by the Task Order issued for a particular EMNRD project. While EMNRD anticipates the need to assign several Task Orders, EMNRD cannot and does not predict or guarantee the number or frequency of Task Order assignments that the successful Offeror(s) may be asked to complete.

EMNRD shall define individual written Task Order requests to include: 1) the purpose of the proposed undertaking that requires environmental or cultural resources compliance services; 2) a summary of the regulatory framework and description of the undertaking; 3) background information on the occupation and use of the project area; 4) the geographical limits of the project area which requires environmental or cultural resource compliance services, including maps that show the location of the project, land ownership and property boundaries, and any relevant details of the project area such as electronic mapping data, report documents, or references; 5) land management procedures and responsibilities, including consent-to-entry, and access contacts; and 6) EMNRD’s expectations for the successful Offeror(s) work products and a desired timeline for the delivery of those work products.

EMNRD shall review the successful Offeror(s) proposed work plans and budget estimates in response to each Task Order request. Upon EMNRD’s acceptance of a particular Task Order response from the successful Offeror(s), EMNRD will issue a written order to proceed with the Task Order.

B. Responsibilities

Successful Offeror(s) shall be responsible for all efforts required to conduct environmental or cultural resource compliance services, in accordance with guidelines issued by the lead federal agency (such as OSMRE, Army Corps of Engineers, Bureau of Land Management, Forest Service, Bureau of Reclamation, or other federal agencies) or by EMNRD. The successful Offeror(s) must possess the appropriate federal, tribal, or state permits to conduct environmental and cultural resource compliance services and supply

evidence of the same in the response to this RFP. EMNRD anticipates that the required work will include but is not limited to:

1. fieldwork (defined as the discovery, identification, and recording of environmental and archaeological sites), and report preparation appropriate to address environmental and cultural resource compliance issues as specified below in Sections III Parts C and D;
2. preparation of maps in a format mutually agreeable to EMNRD and successful Offeror(s) as related to environmental and cultural resource compliance surveys;
3. preparation of preliminary, draft, and final environmental and cultural resource compliance reports, including without limitation Environmental Assessments (EAs) and Categorical Exclusions (CEs), or portions thereof, as directed by EMNRD;
4. participation in consultation with governing agencies and tribal entities for environmental and cultural resource compliance services, as needed; and
5. coordination of public review and comment, as needed.

C. Environmental or Natural Resources Compliance Tasks

Typical environmental or natural resources compliance services requested by EMNRD may include, but are not limited to the following:

1. Biological Assessment and Evaluation

Successful Offeror(s) shall complete biological fieldwork that typically includes, but is not limited to, the following:

- a) identifying and mapping plant communities or ecosystems;
- b) identifying and evaluating the status of underlying ecological processes, such as flooding and wildfire;
- c) delineating wetlands;
- d) evaluating physical and chemical quality of surface waters and groundwaters;
- e) listing all federal and state threatened and endangered species of plants and animals potentially occurring in the relevant area;
- f) evaluating the presence or absence of these and other species of concern, their critical habitats, and relevant conservation or recovery plans; and
- g) listing all species documented in the project area.

2. Biological Report

Successful Offeror(s) shall be responsible for all work required to prepare Biological Assessment and Evaluation reports in accordance with EMNRD or the

lead federal agency's guidelines, if applicable. The draft biological report shall conform to those guidelines and shall be provided to EMNRD for its review.

- a) Draft Written Report - Successful Offeror(s) shall complete a draft biological report based upon the fieldwork conducted. One electronic copy of the draft biological report in standard PDF format shall be provided to EMNRD for review and comment. EMNRD shall send the successful Offeror(s) any revisions or corrections, which the successful Offeror(s) shall incorporate into a revised final report. Successful Offeror(s) shall then provide to EMNRD an electronic copy of the revised biological report in in standard PDF format.
- b) Final Written Report – Upon approval of the revised report, successful Offeror(s) shall then supply to EMNRD one electronic copy in standard PDF format.

4. Environmental Assessments and Categorical Exclusions

Successful Offeror(s) shall be responsible for all work required to prepare EAs/CEs in accordance with the lead federal agency's guidelines. The draft EA/CE shall conform to those guidelines and shall be provided to EMNRD for its review.

- a) Draft EA/CE. Based upon the environmental reports, the successful Offeror(s) shall complete an EA or CE. The format and style of the draft EA/CE shall conform to the guidelines of the federal lead agency or EMNRD and shall be provided to EMNRD for review. Successful Offeror(s) must submit to EMNRD one electronic copy of the draft EA/CE in Standard PDF format. EMNRD shall review the draft report and inform the successful Offeror(s) of any needed changes. Successful Offeror(s) shall make the requested changes and submit to EMNRD a copy of the revised EAs/CE, in standard PDF format along with all supporting biological and cultural reports.
- b) Public Review and Comment. The successful Offeror(s), with input from EMNRD, shall arrange and coordinate public review, comment, and meetings on the draft EA/CE, if required by EMNRD or the lead federal agency. Specific means of obtaining public review and comment shall be determined by EMNRD prior to issuance of each Task Order. Subsequent disclosures may result in additional requirements to be determined by EMNRD and negotiated with the successful Offeror(s).
- c) Final EA/CE Report. Following review of the draft EA/CE by affected agencies and by the public, Successful Offeror(s) shall incorporate any changes specified by EMNRD. The successful Offeror(s) shall then prepare the final EA/CE report and submit to EMNRD, including one electronic copy in in standard PDF format.

5. Pre-Construction and Construction-Related Wildlife Exclusion and Monitoring

Successful Offeror(s) may be tasked with providing construction oversight and monitoring services, including the following:

- a. inspections of project areas for presence of wildlife immediately prior to or during construction or ground disturbing activities;
- b. wildlife regulatory consultation and monitoring in support of EMNRD compliance with Endangered Species Act and Migratory Bird Treaty Act;
- c. removal of wildlife from project areas immediately prior to or during construction or ground disturbing activities; and
- d. installation and removal of temporary wildlife exclusion structures at construction areas using methods approved by EMNRD.

6. Successful Offeror(s) may also be tasked with the following:

- a. participate as needed, in consultation with governing agencies or other organizations and the public regarding specific wildlife species and habitat evaluations as well as assisting in possible public outreach, involvement and education events as approved by EMNRD;
- b. provide assistance on other research topics related to wildlife presence or use associated with EMNRD sites and facilities; and
- c. provide EMNRD with electronic copies of evaluation and monitoring reports as a PDF file upon completion of each evaluation, temporary exclusion, or monitoring event. Include copies of data sheets as an addendum to report summaries of each area evaluated, surveyed, or monitored. Deliver copies of supplemental data which could include video, acoustic recordings, digital photos, and geospatial data. All information shall be labeled with a unique identifier (tied to the EMNRD project identifier where already assigned) and referenced to the appropriate area of the project.

D. Cultural Resource Tasks

Successful Offeror(s) shall develop and submit, for EMNRD approval, a work plan, timeline, and budget to perform the work specified in each Task Order. The successful Offeror(s) shall conduct all cultural resource services for a particular Task Order. The successful Offeror(s) shall subcontract for services only with written EMNRD written approval. The successful Offeror(s) shall respond to EMNRD with any questions and comments on proposed work plans, timelines, and budgets and shall not begin work on a Task Order until receiving written notice to proceed from EMNRD.

Successful Offeror(s) shall perform the type, range, and scope of cultural resources services for EMNRD in accordance with the approved Task Order as determined by the nature of individual projects as defined by EMNRD. All cultural resource services must comply with the standards, guidelines, and regulations or rules as set forth or promulgated under in the NHPA, the New

Mexico Cultural Properties Act (NMCPA), and any other cultural resources laws, as applicable.

Successful Offeror(s) shall submit to EMNRD for review, and comment, all cultural resources documents (such as plans, reports, site forms, maps, and GIS data). Unless specified differently within the Task Order, submissions shall include the following:

1. Draft Final Report documents per the agreed timeline in the work plan. Successful Offeror(s) shall provide all documents in electronic format in standard PDF format. EMNRD may submit Draft Final Report documents to any appropriate land managing agencies and the New Mexico State Historic Preservation Officer (SHPO) for review and comment as determined by EMNRD.
2. Comments and requests for revisions made or approved by EMNRD of the Final Report and administrative forms to EMNRD. In addition, the successful Offeror(s) will provide EMNRD a copy of the Final Report, administrative forms, and maps in standard PDF format. The Final Report shall be accompanied by digital rover files and ESRI shapefiles of survey, archaeological site, and feature extents (polygons, lines, & points).
3. If necessary, revise the Final Draft Report based on SHPO, EMNRD, and land management agency comments and suggested revisions and provide EMNRD with copies of the revised Final Report as specified above.

Typical cultural resource services requested by EMNRD may include, but are not limited to the following:

1. Cultural Resource Inventories
 - a) Background Research - Research pre- and post-European contact land use and culture history in the project area to develop a context, expectations, or predictions about the occupation and use of the project area.
 - b) Inventory - Pedestrian survey and ethnographic research for a proposed project area per NHPA and NMCPA standards.
 - c) Recording - Record all cultural resources within the proposed project area and report on their cultural/temporal affiliation, integrity, and significance and provide an eligibility recommendation based on NHPA and Secretary of the Interior's and NMCPA Standards and Guidelines.
 - d) Forms - Complete New Mexico Cultural Resources Inventory System (NMCRIS) site form(s), New Mexico Historic Cultural Property Inventory (HCPI) Form(s) (for standing structures or

buildings), or any other applicable recording form, as necessary.

- e) Isolated Occurrences - Provide in-field analysis of isolated artifacts and features in a level of detail and format acceptable to EMNRD and land managing agencies.
- f) Mapping - Document the location of all cultural resources on USGS 7.5' Quadrangle map(s) as well as any project specific maps provided by EMNRD and use electronic mapping methods in accordance with NHPA standards and guidelines in addition to EMNRD and the relevant land managing agency requirements.
- g) Plan Drawings - Provide scale plan drawings of archaeological sites and historic structures in accordance with the NHPA, the Secretary of the Interior's Standards and Guidelines, and any additional EMNRD requirements.
- h) Photographs - Provide overview photographs of each site from at least two directions, scale photos of each feature recorded at the site, detail photographs of diagnostic artifacts, structures, and photographs of landscape features or other manifestations, as needed for interpretive or management purposes.

2. Reporting

Cultural Resource Inventory Reports, which shall comply with the Secretary of the Interior Standards and Guidelines and other applicable federal and state standards, containing, at a minimum, the following components:

- a) Research - Background research for proposed project area(s) including information from archaeological records of NMCRIS in Santa Fe and the records of any relevant federal or state land management agency(s).
- b) Contexts - Cultural/historical contexts or cultural landscape studies for the identified project area(s).
- c) Project Description - Description of the proposed project undertaking, location of project area(s), and cultural resource project objectives and methods.
- d) Cultural Resources Description - Description of cultural resources recorded within proposed project area(s), their significance, eligibility recommendations, and evaluation of possible effects based on the project goals and objectives.
- e) Effect – Provide recommendations regarding the project's effect on cultural resources and potential for future research.

- f) Forms - Complete the online New Mexico Cultural Resources Inventory System (NMCRIIS) site form(s), New Mexico Historic Cultural Property Inventory (HCPI) Form(s) (for standing structures or buildings), the NMCRIIS Investigation Abstract Form (NIAF), or any other applicable recording form, as necessary.
- g) Draft Final Report – A preliminary but complete report for review, comment, and revision by EMNRD that complies with requirements of EMNRD, land management agencies, and regulatory agencies; EMNRD may submit this report to other agencies for review as required or at its discretion. Draft copies of forms will be submitted with the draft report.
- h) Revised Draft Final Report – A revised Draft Final Report that incorporates and is responsive to all EMNRD review and revision comments on the Draft Final Report and on form submittals; EMNRD will submit this report to other agencies for review and comment.
- i) Final Report – A Final Report that responds to any EMNRD requirements for revision based on land management, SHPO, EMNRD, or other regulatory or land managing agency review.
- J) NMCRIIS Database – Cultural resource investigations shall be registered in NMCRIIS and pdf copies of the Final Report, NIAF, Site Forms and HCPI Forms shall be uploaded to NMCRIIS in accordance with Cultural Resource Review Committee (CPRC) rule 4.10.19 NMAC.

3. Archaeological Test Excavation or Full-Scale Excavation

- a) Research Design and Data Recovery Plan – A research design and data recovery plan (Plan) for testing or for full scale excavation that delineates the research objectives, field recovery techniques, and sampling strategies in accordance with NHPA, Secretary of the Interior Standards, and NMCPA guidelines. Draft Plans shall be submitted to EMNRD for review prior to the submission of final Plans to permitting agencies.
- b) Data Recovery – Either test excavation or full-scale excavation proceeding upon EMNRD and SHPO acceptance and CPRC approval of the Plan and the Offeror(s) receipt of the relevant Task Order from EMNRD. Data recovery may include, but is not limited to, auguring and manual and mechanical excavation. Data recovery also may include detailed mapping and scaled plan drawings of excavation units, detailed artifact descriptions, inventory, and collections analysis.
- c) Artifact Analysis – Artifact analysis relevant to the scope and scale of the project as defined in the Plan and in accordance with NHPA and Secretary of the Interior Standards.

- d) Draft Final Report – Draft Final Report documents per the agreed upon timeline in the work plan. Successful Offeror(s) shall provide all documents in electronic format in standard PDF format.. EMNRD may submit Draft Final Report documents to any appropriate land managing agencies and SHPO for review and comment as determined by EMNRD.
- e) Final Report – Comments and requests for revisions made or approved by EMNRD of the Final Report and administrative forms to EMNRD. In addition, the successful Offeror(s) will provide EMNRD a copy of the Final Report, administrative forms, and maps in standard PDF format. The successful Offeror(s), if necessary, might be asked to revise the Final Draft Report based on SHPO, EMNRD, and land management agency comments and suggested revisions and provide EMNRD with copies of the revised Final Report.

4. Archival and Ethnographic Research

Archival and ethnographic research for specific cultural resources may include but is not limited to research at libraries; federal, state, county, and city agencies; and private collections. Such research may include ethnographic interviews that shall be documented in a final report or in a separate summary if EMNRD so determines it prefers a summary. Public outreach may include meeting with tribal entities and governing agencies, and interpretive and educational presentations, tours, brochures, or exhibits.

5. Archaeological Monitoring

Archaeological monitoring of construction or other activities may include preparing a monitoring plan in accordance with Secretary of the Interior Standards and NMCPA guidelines. Successful Offeror(s) will submit draft monitoring plans to EMNRD for review, comment, and revision. After SHPO approval of a final monitoring plan, the successful Offeror(s) will monitor construction or project activities in accordance with the plan to ensure compliance with applicable cultural resources law. Following completion of Project monitoring, Successful Offeror(s) will prepare a draft report and any associated forms required by the Plan and will submit draft and final reports and forms to EMNRD for review and comment according to the NHPA and Secretary of the Interior Standards.

6. Public Outreach

The production of publicly accessible products describing the activities and findings of cultural resource investigations are increasingly used to mitigate project effects. There are a variety of formats that may be used depending on the situation including, but not limited to, popular publications, posters, guided site visits, public workshops, and multimedia

presentations.

IV. PROPOSAL CONTENTS

Proposals must contain sufficient information to provide EMNRD with a thorough description of Offeror's qualifications to accomplish the activities described in the Scope of Work.

If an Offeror does not possess the in-house capabilities to perform a particular component of the Scope of Work, the response shall demonstrate the Offeror's ability to prepare and administer a subcontract or to work jointly with another firm having the requisite expertise to accomplish that component of the project. Any work performed under a subcontract, joint venture, partnership, or other joint undertaking with another firm must comply with State of New Mexico Procurement Code procedures and EMNRD contracting requirements.

The proposal **MUST** contain, at a minimum, all listed items in the sequence indicated and be organized in the following format.

1. Letter of transmittal that:
 - a) identifies the name, title, telephone numbers, and e-mail address of the person authorized to negotiate the contract on behalf of the Offeror.
 - b) identifies the names, titles, telephone numbers, and e-mail addresses of persons to be contacted for clarification.
 - c) explicitly indicates acceptance of the terms and conditions of this RFP, including the terms and conditions of the attached draft Professional Services Agreement (PSA), and the RFP evaluation factors.
 - d) acknowledges receipt of all amendments to this RFP; and
 - e) is signed by the person authorized to contractually obligate the Offeror.
2. Descriptions of similar projects Offeror(s) has performed, including experience and expertise in project development, initiation, management, and completion of work. Must include one example of a cultural resource inventory report, and a biological assessment or wildlife, migratory bird, or bat habitat assessment report.
3. Description of technical capabilities, equipment, hardware and software for report production, data collection, processing, management and analysis, and mapping or geospatial data, services, training, mine safety or other related safety training, and any other resources useful in accomplishing the required work.
4. Description of systems and procedures for recording, storing, retrieving, and manipulating drawings, images, maps, reports, and project data.

5. Description of systems and procedures for project planning and administration, cost control, and marketing milestones. Description of invoicing procedures including but not limited to staff names, hourly rates, reimbursable expenses, and the inclusion of Gross Receipts Taxes.6. Offeror(s) shall describe such travel expenses as may be incurred, and that are necessary for, the performance of this Agreement at the rates established in the New Mexico Per Diem and Mileage Act, NMSA 1978, Sections 10-8-1 et seq., as implemented by the current Department of Finance and Administration rule and the current EMNRD travel policy.
7. Names and qualifications of key personnel to be assigned to the work, including brief biographies, resumes, permits, licenses, and certificates that qualify Offeror for this work, as well as any subcontractor, or firm the Offeror may use to complete assigned tasks.
8. Offerors shall complete, sign, and submit with Offeror's proposal response the Campaign Contribution Disclosure Form (Attachment 1) and disclose whether Offeror, a family member, or a representative of the Offeror has made a campaign contribution to an applicable public official during the two years prior to the RFP. Offeror shall complete the non-disclosure statement or make separate disclosures for all campaign contributions given by (1) the Offeror, (2) a family member, or (3) a representative of the Offeror.
9. Offerors must also include a completed, signed Statement of Assurances Form (Attachment 2).
10. Organizational References – Offerors must also provide a minimum of two business references from similar projects performed for private, state, or large local government clients within the last three years. Offerors are required to submit Attachment 3 to the business references they list. The business references must submit the Reference Questionnaire directly to the EMNRD Contact Person listed in Section VIII, Contact Person and Due Dates, below. Offerors are responsible for ensuring that the completed forms are received by or before the proposal submission deadline for inclusion in the evaluation process. Business references that are not received, or are not complete, may adversely affect the Offeror's score in the evaluation process. The Evaluation Team may contact any or all business references for validation of information submitted.

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

V. CRITERIA AND EVALUATION POINT SUMMARY

Due to the contracts being paid out with federal funds, the New Mexico resident business and/or veterans preferences do not apply to the selection of Offeror(s). The Evaluation Team shall use the following criteria in the evaluation of proposals and in the selection of successful Offeror(s):

No.	Evaluation Factor	Points
1.	<p>Technical Capabilities and Facilities</p> <p>Demonstrate access to, and application of, technical capabilities and facilities. Include description of field equipment, laboratory equipment, facilities, and relevant mine safety training; description of hardware and software for data collection, processing, management, and analysis; description of hardware and software for mapping or geospatial data; and software for report production. Demonstrate logistical support available for use in evaluations and surveys.</p>	25 points
2.	<p>Work History</p> <p>Demonstrate history of experience and expertise in project development, initiation, and completion of work of a similar nature. Demonstrate effective project and contract management. This criterion considers the Offeror's past record of performance on contracts with consideration to timeliness and technical success. This factor also considers project planning and administration, cost control, and demonstrated experience and the ability to complete projects within established deadlines and budgets. This criterion considers the Offeror's experience and execution of similar work and considers size and complexity of past projects.</p> <p>Offeror must provide one example report each of a natural and cultural resources evaluation and any associated survey assessment reports in PDF format from a previous work assignment for the Evaluation Team to examine.</p>	30 points
3.	<p>Staff Qualifications</p> <p>Demonstrate relevant education, experience, knowledge, and skills of key staff.</p> <p>This criterion considers the education, experience, knowledge, and skills of the Offeror's management staff, service technicians, and other personnel assigned to the contract. In addition to the demonstrated qualifications, experience, and success of key staff regarding natural and cultural resources evaluation and associated survey work.</p> <p>Provide resumes of key staff related to the proposed work.</p>	30 points
4.	Description of systems and procedures for project planning and administration, cost control, and marking milestones.	10 points
5.	<p>References</p> <p>Points will be awarded based upon an evaluation of the responses to a series of questions that will be asked of the references concerning the quality of the Offeror's services, the timeliness of services, responsiveness to problems and complaints, and the level of satisfaction with the Offerors overall performance (See Attachment 3, Reference Questionnaire).</p>	5 points
	TOTAL	100 maximum

VI. EVALUATION PROCESS

The evaluation process will follow the steps listed below:

1. The Evaluation Team will review proposals for compliance with the mandatory requirements stated within this RFP. Proposals deemed non-responsive will be eliminated from further consideration.

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

3. The Evaluation Team will evaluate responsive proposals based on the criteria in Section V and will select responsive Offeror(s) with the highest total weighted scores as finalist Offeror(s). The Evaluation Team will consult with listed references and select the finalist Offeror(s) whose proposal and references is/are most advantageous to EMNRD, for award. Please note, however, that a deficiency in any one factor may be grounds for rejection regardless of overall score.

VII. CONTRACT AWARD AND DURATION

EMNRD may award multiple contracts as a result of this RFP, and in accordance with this RFP's terms and the terms of the attached draft PSA (Attachment 4). Any PSA awarded as a result of this RFP shall not be binding until approved by both EMNRD and the General Services Department, Contracts Review Bureau. Award of an agreement does not obligate EMNRD to award any task orders to the successful Offeror(s).

The contract period for PSAs shall extend from the date of contract approval by the Contracts Review Bureau, and may last no longer than four years, including amendments and any renewals.

VIII. CONTACT PERSON AND DUE DATES

Any inquiries or requests regarding this procurement must be submitted in writing to the EMNRD Contact Person listed below. Offerors may contact ONLY the Contact Person regarding this RFP. Other state employees or Evaluation Team members do not have authority to respond on EMNRD's behalf.

The Contact Person is:

Ashley Veihl
AML Project Manager
Mining and Minerals Division
State of New Mexico, Energy, Minerals and Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
Email: ashley.veihl@emnrd.nm.gov
Telephone: (505) 785-4542

Deadlines for Written Questions

Potential Offerors may submit written questions to the Contact Person as to the intent or clarity of this RFP until 5 p.m. MDT September 1st, 2025. All written questions must be addressed to the Contact Person as indicated above. Questions shall be clearly labeled and shall cite the Section(s) in the RFP or other document which form the basis of the question.

The Division will post written responses to such questions on the Division website: <http://www.emnrd.state.nm.us/MMD/announcements.html>, by September 4th, 2025.

Proposal Due Date

Potential Offerors shall submit their proposals electronically in PDF format to Ms. Veihl at the above email address no later than 3 p.m. MDT on September 11th, 2025. Proposals must be submitted in the format specified above in Section IV, Proposal Contents. Proposals must be received by the stated date and time to be considered. EMNRD shall not accept proposals received after this date and shall make absolutely no exceptions for proposals not received by the appointed time. Proposals will begin to be reviewed after the submittal due date in the EMNRD Mining and Minerals Division office, 1220 S. St Francis Dr, Santa Fe, NM 87505. Offeror(s) will be notified of selection/non-selection via email.

Protest Period

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

IX. NOTICES

Award of agreements is contingent upon sufficient appropriations and authorization being made by the State of New Mexico or the lead federal agency providing federal funding.

Offerors must factor in Gross Receipts Tax (GRT) costs as part of their responses. Any response that does not clearly indicate GRT is included in the budget may be deemed non-responsive and rejected.

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

EMNRD may conduct discussions with Offerors who submit proposals but may also accept proposals without such discussions.

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

Attachment 1

Campaign Contribution Disclosure Form

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

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

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

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

The following definitions apply:

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

"Campaign Contribution" means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to statewide or local office. "Campaign Contribution" includes the payment of a debt incurred in an election

campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

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

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

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

“Representative of a prospective contractor” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

Note: A prospective contractor shall make **separate** disclosures of all campaign contributions given by (1) the prospective contractor, or (2) a family member or (3) representative of the prospective contractor, or shall complete the non-disclosure statement, as applicable.

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By:			
Relation to Prospective Contractor:			
Name of Applicable Public Official:		Governor Susana Martinez	
Contribution(s) Date(s)	Contribution Amount(s):	Nature of Contribution(s):	Purpose of Contribution(s):
	\$		
	\$		
	\$		
	\$		
	\$		

(Attach extra pages if necessary)

Signature: _____

Date: _____

Title/Position: _____

--OR--

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

Signature: _____

Date: _____

Title/Position: _____

Attachment 2

Statement of Assurances Form

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

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

Offeror shall examine all contract documents, noting particularly all stipulations that in any way affect contract work. Failure of an Offeror to acquaint itself fully with the amount and nature of the work required to fulfill all terms of the contract documents shall not be considered a basis for extra compensation after a contract has been awarded.

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

In order to receive consideration, Offeror's proposal must be signed by an officer having the authority to bind Offeror.

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

New Mexico Employees Health Coverage:

If Offeror has, or grows to, six or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six-month period during the term of any Agreement which may result from this RFP, Offeror agrees, by submitting a proposal, to have in place, and agrees to maintain for the Agreement's term, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Offeror and the state exceed \$250,000.

Offeror 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.

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

Application of Veterans Preference or New Mexico Business Preference:

This procurement is excluded from state preference laws because it is funded with federal dollars.

Offeror Signature

Date:

Attachment 3

**REQUEST FOR PROPOSALS
FOR PROVIDING AS-NEEDED ENVIRONMENTAL AND CULTURAL RESOURCE COMPLIANCE
SERVICES
AT ABANDONED MINE SITES THROUGHOUT NEW MEXICO
ISSUED BY THE ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT,
MINING AND MINERALS DIVISION
REFERENCE QUESTIONNAIRE**

**Name of Individual/Entity
Requesting Reference:**

The State of New Mexico, as a part of the RFP process, requires Offerors to submit a minimum of two business references as required within this document. The purpose of these references is to document the experience relevant to the scope of work and provide assistance in the evaluation process.

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

This form is being submitted to you for completion as a business reference for the individual or entity above. Please return this completed form directly to Laurence D'Alessandro, Water Resource Specialist, Mining and Minerals Division, Energy, Minerals and Natural Resources Department, 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, Telephone: (505) 469-0511, e-mail: Laurence.Dalessandro@state.nm.us no later than 3 p.m. _____. Do not return this form to the individual or entity requesting the reference.

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

**Name of Individual/Entity
Providing Reference:**

**Contact Name and
Title/Position:**

**Contact Telephone
Number:**

Contact E-Mail Address:

QUESTIONS

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

2. How would you rate this Offeror's knowledge and expertise? (Check one)

3 – Excellent _____

2 – Satisfactory _____

1 – Unsatisfactory _____

0 – Unacceptable _____

Comments:

3. How would you rate the Offeror's flexibility relative to changes in the project scope and timelines? (Check one)

3 – Excellent _____	2 – Satisfactory _____	1 – Unsatisfactory _____	0 – Unacceptable _____
Comments:			
4. What is your level of satisfaction with hard-copy materials produced by the Offeror? (Check one)			
3 – Excellent _____	2 – Satisfactory _____	1 – Unsatisfactory _____	0 – Unacceptable _____
Comments:			
5. How would you rate the dynamics/interaction between the Offeror and your staff? (Check one)			
3 – Excellent _____	2 – Satisfactory _____	1 – Unsatisfactory _____	0 – Unacceptable _____
Comments:			
6. Who were the Offeror's principal representatives involved in your project and how would you rate them individually? Would you comment on the skills, knowledge, behaviors or other factors on which you based the rating? (3 – Excellent; 2 – Satisfactory; 1 – Unsatisfactory; 0 – Unacceptable)			
Principal Representative Name:			Rating: _____
Principal Representative Name:			Rating: _____
Principal Representative Name:			Rating: _____
Principal Representative Name:			Rating: _____
Comments:			
7. How satisfied are you with the products developed by the Offeror? (Check one)			
3 – Excellent _____	2 – Satisfactory _____	1 – Unsatisfactory _____	0 – Unacceptable _____
Comments:			
8. With which aspect(s) of the Offeror's services are you most satisfied? (Please explain)			
9. With which aspect(s) of the Offeror's services are you least satisfied? (Please explain)			
10. Would you recommend this vendor's services to your organization again? (Please explain)			

**STATE OF NEW MEXICO,
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
PROFESSIONAL SERVICES AGREEMENT (AGREEMENT)**

THIS AGREEMENT (Agreement) is made and entered into by and between the State of New Mexico, **Energy, Minerals and Natural Resources Department, (EMNRD) and (insert contractor name) (Contractor)**, and is effective as of the date set forth below upon which it is executed by the General Services Department/State Purchasing Division (GSD/SPD) Contracts Review Bureau.

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

Contractor shall perform the following work:

(Insert Scope of Work here.)

2. Compensation.

Option 1: Work Product.

A. EMNRD shall pay Contractor for services satisfactorily performed pursuant to the Scope of Work and as specified below. This amount shall not exceed _____ (\$ _____), which amount includes travel and New Mexico gross receipts taxes pursuant to Paragraphs C and D of this Compensation Section (if travel is negotiated. Travel payment language also does not apply when paying on a deliverables basis unless the travel is set out as a separate item. If travel is not paid, remove reference to travel.). EMNRD shall make payment upon the satisfactory and timely completion of the work described in the Scope of Work and for no more than the maximum amount set forth below for each deliverable:

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

In no event shall Contractor be paid for services provided or travel expenses exceeding the total compensation amount without this Agreement being amended in writing prior to those services or expenses exceeding the total compensation amount being provided.

(—OR—)

Option 2: Lump Sum Amount Upon Completion of All Work.

A. Upon satisfactory completion of services, EMNRD shall pay Contractor for services satisfactorily performed pursuant to the Scope of Work in an amount not to exceed _____ (\$_____), which amount includes New Mexico gross receipts taxes.

(—OR—)

Option 3: Time and Materials. Travel may or may not be paid, depending on negotiation between EMNRD and Contractor.

A. EMNRD shall pay to Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work rendered at the rate of \$_____ per hour, such compensation not to exceed \$_____, which amount includes travel and New Mexico gross receipts taxes, pursuant to Paragraphs C and D of this Compensation Section. This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying EMNRD when the services provided under this Agreement reach the total compensation amount. In no event will Contractor be paid for services provided or travel expenses exceeding the total compensation amount without this Agreement being amended in writing prior to those services exceeding the total compensation amount being provided.

B. (For single-year contract, may need to tweak the first sentence.) Payment in FYXX, FYXX, and FYXX is subject to availability of funds pursuant to Section 5, Appropriations, set forth below and to any negotiations between the parties from year to year pursuant to Section 1, Scope of Work, and to approval by GSD/SPD. 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 WILL NOT BE PAID.

C. (To be negotiated at EMNRD's discretion. Travel payment language does not apply when choosing to pay Contractor on a lump sum basis. Travel payment language also does not apply when paying on a deliverables basis unless the travel is set out as a separate item.) EMNRD shall pay such travel expenses as may be incurred, and that are necessary for, the performance of this Agreement at the rates established in the New Mexico Per Diem and Mileage Act, Sections 10-8-1 through 10-8-8 NMSA 1978, as implemented by the current Department of Finance and Administration rule and the current EMNRD travel policy.

D. Contractor is responsible for paying New Mexico Gross Receipts taxes levied on amounts payable under this Agreement.

E. Contractor 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, Contractor shall also provide documentation of hours expended on the services provided.) If EMNRD finds the invoice services, or expenses are not acceptable, within 30 days of receipt of written notice from Contractor that payment is requested for services received, EMNRD shall provide Contractor a letter of exception explaining the defect or objection to the invoice, services, or expenses, and outlining steps Contractor 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 Contractor within 30 days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, EMNRD shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. Effective Date and Term.

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

4. Termination.

A. EMNRD.

1) EMNRD may terminate this Agreement for convenience or cause by giving written notice to Contractor at least 30 days prior to the intended date of termination, except that EMNRD may terminate this Agreement immediately by giving written notice to Contractor if (i) Contractor becomes unable to perform the services contracted for as determined in the sole discretion of EMNRD; (ii) during the term of this Agreement, Contractor is suspended or debarred by the State Purchasing Agent; (iii) this Agreement is terminated pursuant to Section 5, Appropriation, of this Agreement; or (iv) this Agreement is terminated pursuant to Section 12, Conflict of Interest; Governmental Conduct Act. (May need to revise Section number to track actual contract contents.)

2) Except as otherwise expressly allowed or provided by this Agreement, EMNRD's sole liability upon termination shall be to pay for acceptable work performed prior to Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. This provision is not exclusive and does not waive EMNRD's other legal rights and remedies caused by Contractor's default/breach of this Agreement.

B. Contractor.

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

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

- 1) not incur any further obligations for salaries, services, or any other expenditure of funds under this Agreement without EMNRD's written approval;
- 2) comply with all directives EMNRD issues in the notice of termination as to the performance of work under this Agreement; and
- 3) take such action as EMNRD directs for the protection, preservation, retention, or transfer of all property titled to EMNRD and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by Contractor with contract funds shall become property of EMNRD upon termination and shall be submitted to EMNRD as soon as practicable. (If federal funding is involved, include the following clause. If not, delete it.) Otherwise, all property procured under this Agreement shall be used and disposed of in accordance with (insert name of federal funding entity) regulations.
- 4) Contractor shall submit an invoice for work performed prior to Contractor's receipt or issuance of a notice of termination no later than 30 days after receiving or sending a notice of termination.

5. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico and (insert name of federal funding entity) for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature and (insert name of federal funding entity), this Agreement shall terminate immediately upon written notice being given by EMNRD to the Contractor. EMNRD's decision as to whether sufficient appropriations

are available shall be accepted by the Contractor and shall be final. If EMNRD proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within 30 days of receipt of the proposed amendment.

6. Status of Contractor.

The Contractor and its subcontractors and employees are independent contractors performing professional services for EMNRD and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor has no authority to bind and shall not bind the State of New Mexico unless expressly authorized in writing by the State of New Mexico, and then only within the strict limits of that authority.

7. Assignment.

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

8. Subcontracting.

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

9. Release.

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

10. Confidentiality.

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

11. Product of Service -- Copyright.

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

12. Conflict of Interest; Governmental Conduct Act.

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

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978C. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with NMSA 1978, Section 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Agency employee while such employee was or is employed by EMNRD and participating directly or indirectly in EMNRD's contracting process;

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

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

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

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

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

C. Contractor's representations and warranties in Paragraphs A and B of this Section 12 are material representations of fact upon which EMNRD relied when entering into this Agreement. Contractor shall provide immediate written notice to EMNRD if, at any time during this Agreement's term, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Section 12 were erroneous on this Agreement's effective date or have become erroneous by reason of new or changed circumstances occurring after this Agreement's effective date. In such an occurrence, and in addition to all remedies available to EMNRD and notwithstanding anything in this Agreement to the contrary, EMNRD may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Section 12.

13. Amendment.

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

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, covenant, or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless 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.

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

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, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over all lawsuits arising under or out of this Agreement's terms.

18. Records and Financial Audit.

The Contractor shall maintain 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 for a period of six years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, the General Services Department/State Purchasing Division and the State Auditor. EMNRD shall have the right to audit time and expenditure records both before and after payment, and Contractor agrees to include in all subcontracts hereunder the same right of inspection and audit against all subcontractors. Payment under this Agreement shall not foreclose EMNRD's right to recover excessive or illegal payments. In EMNRD's, GSD/SPD's, or the State Auditor's, (or insert name of federal funding entity)'s sole discretion, the periods of inspection and audit may be extended for records which relate to litigation or settlement of claims arising out of performance of this Agreement (and costs and expenses of this Agreement for which exception is under consideration by the

federal funding agency or any authorized representative) and shall continue until all potential litigation, appeals, claims, or exceptions have expired or been resolved.

19. Indemnification.

The Contractor shall defend, indemnify and hold harmless EMNRD, its officers, employees, agents, and representatives, and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, including any action, proceeding, claim, demand, cost, damage, attorney's fee, or other liability or expense caused by the negligent act or failure to act of the Contractor or its officers, employees, servants, subcontractors, consultants, or agents, or caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor, Contractor's officers, agents, employees, servants, consultants, or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, , proceeding, claim, demand, cost, damage, attorney's fee or any other liability or expense which may arise out of the performance of this Agreement is brought against the Contractor or its officers, employees, servants, subcontractors, consultants, or agents, the Contractor shall, as soon as practicable but no later than two days after it receives notice thereof, notify EMNRD's legal counsel of and the Risk Management Division of the New Mexico General Services Department by certified mail. Nothing in this Agreement shall be deemed to be a waiver by the State of New Mexico of the provisions of the Tort Claims Act, NMSA 1978, Sections 41-4-1 through 41-4-27 and 41-4-30.

20. New Mexico Employees Health Coverage.

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

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

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

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

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 effective waiver by a party of any of its rights shall be effective to waive any other rights.

23. Notices.

Except as otherwise specified herein, all notices hereunder shall be in writing (including notice by facsimile) and shall be given to the relevant party at its mailing address, or if set forth below, at its e-mail address, or such other address as such party may hereafter specify by written notice to the other given by courier, by United States certified or registered mail, or by e-mail or by other 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 Contractor:

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

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

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

26. Attorneys' Fees and Costs.

Contractor agrees that if Contractor is found by a court of competent jurisdiction to have breached this Agreement, or any amendment hereto, or to have committed any tortious act relating to this Agreement, EMNRD shall be entitled to recover from Contractor reasonable attorneys' fees and costs for pre-litigation research, investigation, and preparation, litigation brought to obtain such judicial determination, any appeal of such determination, and to collect any judgment.

27. Minimum Wage Rate.

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

28. Compliance with Funding Source Conditions.

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

Contractor is responsible for obtaining a copy of any federal funding award that provides funding for this Agreement.

(Are you using federal funds for this Agreement? Depending on the funding source, you may be required to include the following. If not, delete this instruction and the following clauses.)

Contractor shall also comply with the following clauses in the performance of this Agreement:

A. Compliance with use of Small Businesses (SBs), Minority Business Enterprises (MBEs) and Women's Business Enterprises (WBEs), Veteran-Owned Businesses (VBs), and Labor Surplus Area Firms (LSAFs) - Contractor 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 SBs/MBEs/WBEs/VBs/LSAFs on solicitation lists;
- 2) assuring that SBs/MBEs/WBEs/VBs/LSAFs are solicited once they are identified;
- 3) when economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum SB/MBE/WBE/VB/LSAF participation;
- 4) where feasible, establishing delivery schedules which will encourage SB/MBE/WBE/VB/LSAF 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 SBs/MBEs/WBEs/VBs/LSAFs, as required; and
- 6) if any subcontracts are to be let, requiring the subcontractor to take the affirmative steps listed above.

B. Compliance with Trafficking Victims Protection Act of 2000 - Contractor, Contractor'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.

C. Compliance with NMSA 1978, Section 66-7-374, Texting While Driving - Contractor and Contractor'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.

D. In the event this Agreement is funded with federal monies, Contractor shall comply with 2 C.F.R. 200.318 through 200.327 for procurement conducted pursuant to this Agreement.

E. In the event this Agreement is funded with federal monies and Contractor 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, Contractor 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).

F. Contractor 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.

G. If the value of this Agreement exceeds \$100,000, Contractor 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.

H. If this Agreement is valued at more than \$150,000, Contractor 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.

I. Contractor should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, product or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

- 1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- 2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pip; aggregates such as concrete; glass, including optical fiber; and lumber.

J. Compliance with the Davis-Bacon Act (40 U.S.C. § 3141-3144 and 3146-3147), as amended and as supplemented by the U.S. Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction") – Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of the U.S. Department of Labor. In addition, Contractor shall pay wages not less than once per week.

K. Compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by the U.S. Department of Labor regulations (29 CFR Part 3) – Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which they are entitled.

L. If this Agreement is valued at more than \$100,000 and involves the employment of mechanics or laborers, Contractor must comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. § 3702 and § 3704) as supplemented by the U.S. Department of Labor regulations (29 CFR Part 5).

M. If the Federal Award meets the definition of "funding agreement" under 37 CFR § 401.2(a), the Contract must comply with "Rights to Inventions Made by Nonprofit Organizations, Small Business Firms Under Government Grants, Contracts and Cooperative Agreements" (37 CFR Part 401).

N. Contract should, to the greatest extent practicable and consistent with law, purchase acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, or biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products. Procurement of such items as prescribed in the guidelines of the U.S. Environmental Protection Agency (40 CFR Part 247).

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

A. Contractor certifies that, by signing this Agreement, it will establish and maintain during this Agreement's term, the following policy or policies of insurance providing:

1) Workers' Compensation protection that complies with the requirements of the Workers' Compensation Act, NMSA 1978, Chapter 52, Article 1, if applicable. Employer's liability: \$100,000.00. If Contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, EMNRD may terminate this Agreement.

2) Comprehensive general liability protection (including endorsements providing broad form property damage, personal injury coverage, and contractual assumption of liability for all liability Contractor has assumed under this Agreement or any amendment thereto), pursuant to NMSA 1978, Section 41-4-19, as may be amended from time to time. Limits shall not be less than the following:

- a. bodily injury: \$1,000,000.00 per person/\$1,000,000.00 per occurrence;
- b. property damage or combined single limit coverage: \$1,000,000.00;
- c. automobile liability (including non-owned automobile coverage): \$1,000,000.00; and
- d. umbrella: \$1,000,000.00.

Such policy or policies shall name the State of New Mexico and EMNRD as additional insured and shall specifically state the coverage provide under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

3) Comprehensive performance liability protection covering contractual liability that may arise under this Agreement and any amendment hereto. Such policy or policies shall name the State of New Mexico and EMNRD as additional insured and shall specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation. (Optional)

4) Professional liability insurance covering Contractor's negligent acts, errors, or omissions. (For agreements with architects, engineers, lawyers, etc.)

5) Medical malpractice liability insurance that complies with the Medical Malpractice Act, NMSA 1978, Chapter 41, Article 5 (For agreements with medical providers who are required to have malpractice insurance.)

6) General liability insurance sufficient to cover the claims which may fall under the Indemnification Paragraph of this Agreement. (For agreements with medical providers who are not required to have malpractice insurance.)

B. Contractor shall provide EMNRD with a copy of the insurance certificate no later than 10 days after this Agreement's effective date. At EMNRD's request, Contractor shall also provide EMNRD with a copy of the insurance policy, or relevant portions thereof. Contractor shall notify EMNRD 30 days before cancellation or expiration of any required Workers' Compensation coverage or (include the references to the types of insurance you are asking for).

[This space intentionally left blank]

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

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

By: _____ Date: _____
Cabinet Secretary or Designee

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

By: _____ Date: _____
Chief Financial Officer

CONTRACTOR NAME

By: _____ Date: _____
Authorized Representative Signature

Printed Name and Title

This Agreement has been approved by the GSD/SPD Contracts Review Bureau

By: _____ Date: _____
GSD/SPD Contracts Review Bureau

(Selection Option 1 or 2)

Option 1:

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

**STATE OF NEW MEXICO
TAXATION AND REVENUE
DEPARTMENT**

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

By: _____

Date: _____

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

Option 2:

Services will be performed out-of-state, Contractor is exempt from paying gross receipts taxes.

**STATE OF NEW MEXICO
TAXATION AND REVENUE
DEPARTMENT**

By: _____

Date: _____

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