

**GENERAL SERVICES DEPARTMENT**

**FACILITIES MANAGEMENT DIVISION**

**THE STATE OF NEW MEXICO, ENERGY, MINERALS AND NATURAL  
RESOURCES DEPARTMENT, MINING AND MINERALS DIVISION,  
ABANDONED MINE LAND PROGRAM**

**REQUEST FOR PROPOSALS (RFP)**

**Abandoned Mine Land Program  
Professional Engineering Services**

**Santa Fe, New Mexico**



**RFP# 30-521-23-06106**

**Release Date: April 27, 2023**

**Proposal Due Date: June 15, 2023**

**4:00 PM MDT via e-mail [Martin.Kuziel@gsd.nm.gov](mailto:Martin.Kuziel@gsd.nm.gov)**

**Mandatory Pre-Proposal Virtual Meeting: May 15, 2023**

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**REQUEST FOR PROPOSALS  
FOR PROVIDING AS-NEEDED ENGINEERING  
SERVICES FOR ABANDONED MINE LANDS  
THROUGHOUT NEW MEXICO  
ISSUED BY THE STATE OF NEW MEXICO, ENERGY, MINERALS AND NATURAL  
RESOURCES DEPARTMENT,  
MINING AND MINERALS DIVISION**

***I. INTRODUCTION***

**A. PURPOSE OF THIS REQUEST FOR PROPOSALS**

The State of New Mexico, Energy, Minerals and Natural Resources Department (EMNRD), Mining and Minerals Division (MMD), Abandoned Mine Land (AML) Program, is seeking proposals for engineering services from firms or individuals for reclamation and safeguarding of abandoned mine sites throughout New Mexico on an as-needed basis. The successful firm(s) or individual(s) shall work with AML personnel or through an independent contractor or a combination thereof.

The scope of services associated with this Request for Proposals (RFP) are professional engineering services that assist the AML Program in meeting its mandate under State and federal statute to protect public health, safety and property from the extreme danger and adverse effects of historic mining practices and to restore land and water resources and the environment degraded by historic coal mining practices.

**B. BACKGROUND INFORMATION**

In 1977, Title IV of the federal Surface Mining Control and Reclamation Act (Act) established the Abandoned Mine Reclamation Fund. MMD's mandate, initiated in 1981, is to safeguard the public from the physical hazards and environmental detriments associated with mining practices and mines abandoned prior to enactment of the Act.

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 the National Historic Preservation Act and related laws and the regulations of the National Environmental Policy Act.

**C. SCOPE OF PROCUREMENT**

The General Services Department (GSD), Facilities Management Division (FMD) and EMNRD/AML Program may award multiple contracts under the terms of this RFP. Any Professional Services Agreement (PSA) awarded as a result of this RFP shall not be binding until approved by both EMNRD/AML Program and the GSD, Contracts Review Bureau, and may not exceed a term of four years, including amendments. Each PSA shall not exceed six hundred fifty thousand dollars (\$650,000.00) according to NMSA 1978, Section 13-1-154.1. Award of a PSA

or PSAs does not obligate the AML Program to award any work to the successful Offeror(s).

#### **D. DEFINITION OF TERMINOLOGY**

This section contains definitions of terms used throughout this RFP, including appropriate abbreviations:

“AML Program” means the EMNRD, Mining and Minerals Division, Abandoned Mine Land Program.

“Agency” means the Energy, Minerals and Natural Resources Department, Mining and Minerals Division.

“Confidential” means confidential financial information concerning offeror’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act NMSA 1978, Section 57-3-A-1 to 57-3A-7. See 1.4.1.45 New Mexico Administrative Code (NMAC). As one example, no information that could be obtained from a source outside this RFP can be considered confidential information.

“Contract” means any agreement for the procurement of items of tangible personal property, services or construction.

“Contractor” means any business having a contract with a State Agency or local public body.

“Determination” means the written documentation of a decision of a procurement officer including findings of fact required to support a decision. A Determination becomes part of the procurement file to which it pertains.

“Desirable” the terms "may", "can", "should", "preferably", or "prefers" identify a desirable or discretionary item or factor.

"EMNRD" means the Energy, Minerals and Natural Resources Department.

“Evaluation Committee” means a body appointed to perform the evaluation of Offerors’ proposals.

“Evaluation Committee Report” means a report prepared by the Procurement Manager and the Evaluation Committee for contract award. It will contain written determinations resulting from the procurement.

“FMD” means the Facilities Management Division which is part of the NM General Services Department.

“Mandatory” – the terms "must", "shall", "will", "is required", or "are required", identify a mandatory item or factor. Failure to meet a mandatory item or factor can result in the rejection of the Offeror’s proposal.

“Offeror” is any person, corporation, or partnership who chooses to submit a proposal.

“Procurement Manager” means any person or designee authorized by a State Agency or local public body to enter into or administer contracts and make written determinations with respect thereto.

“Project” means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The Project terminates once the Project scope is achieved and the Project acceptance is given by the AML Program Manager.

“Request for Proposals (RFP)” means all documents, including those attached or incorporated by reference, used for soliciting proposals.

“Responsible Offeror” means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services, or items of tangible personal property described in the proposal.

“Responsive Offer” or means an offer which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to price, quality, quantity or delivery requirements.

“Sealed” means, in terms of a non-electronic submission, that the proposal is enclosed in a package which is completely fastened in such a way that nothing can be added or removed. Open packages submitted will not be accepted except for packages that may have been damaged by the delivery service itself. The State reserves the right, however, to accept or reject packages where there may have been damage done by the delivery service itself. Whether a package has been damaged by the delivery service or left unfastened and should or should not be accepted is a Determination to be made by the Procurement Manager. By submitting a proposal, the Offeror agrees to and concurs with this process and accepts the Determination of the Procurement Manager in such cases.

“SPD” means State Purchasing Division of the New Mexico State General Services Department.

“Staff” means any individual who is a full-time, part-time, or an independently contracted employee.

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

“State Agency” means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of this state. “State Agency”

includes the purchasing division of the general services department and the State Purchasing Agent but does not include local public bodies.

“State Purchasing Agent” means the director of the State Purchasing Division of the General Services Department.

“Written” means typewritten on standard 8 ½ x 11 inch paper. Larger paper is permissible for charts, spreadsheets, etc.

## **E. PROCUREMENT LIBRARY**

A procurement library has been established. Offerors are encouraged to review the material contained in the Procurement Library by selecting the link provided in the Electronic Version of this document through your own internet connection or by contacting the Procurement Manager and scheduling an appointment. The library contains information listed below:

<https://www.generalservices.state.nm.us/statepurchasing/active-procurements.aspx>

## **II. CONDITIONS GOVERNING THE PROCUREMENT**

This section of the RFP contains the schedule, description and conditions governing the procurement.

### **A. PROCUREMENT MANAGER**

1. The General Services Department (GSD) Facilities Division (FMD) has assigned a Procurement Manager who is responsible for the conduct of this procurement whose name, address, telephone number and e-mail address are listed below:

General Services Department, Facilities Management Division  
Attn: Martin Kuziel  
2542 Cerrillos Rd  
Santa Fe, NM 87502  
Phone: 505-795-0116  
E-mail: Martin.Kuziel@gsd.nm.gov

2. **Any inquiries or requests** regarding this procurement must be submitted, in writing, to the Procurement Manager. Offerors may contact ONLY the Procurement Manager regarding this procurement. Other state employees or Evaluation Committee members do not have the authority to respond on behalf of the SPD. **Protests of the solicitation or award must be delivered by mail to the Protest Manager.** As A Protest Manager has been named in this Request for Proposals, pursuant to NMSA 1978, § 13-1-172, ONLY protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. Emailed protests will not be considered as properly submitted nor will protests delivered to the Procurement Manager be considered properly submitted.

## B. SEQUENCE OF EVENTS

The Procurement Manager will make every effort to adhere to the following schedule. The notional schedule for the procurement is as follows:

**Table 1: Notional Schedule of Events**

<b>Action</b>	<b>Responsible Party</b>	<b>Due Dates</b>
1. Issue RFP	State Purchasing Division (SPD)	April 27, 2023
2. Acknowledgement of Receipt Form to be added to Distribution List	Potential Offerors	May 15, 2023
3. Pre-Proposal Conference	EMNRD/AML	May 15, 2023
4. Deadline to submit Questions	Potential Offerors	May 26, 2023
5. Response to Written Questions	Procurement Manager	June 2, 2023
<b>6. <i>Submission of Proposal</i></b>	<b><i>Potential Offerors</i></b>	<b><i>June 15, 2023</i></b>
7.* Proposal Evaluation	Evaluation Committee	June 6 - June 30, 2023
8.* Selection of Finalists	Evaluation Committee	June 30, 2023
9.* Notification of Finalist Offers	EMNRD/AML/Finalist Offeror(s)	July 3 – July 7, 2023
10.* Finalize Contractual Agreements	EMNRD/AML/Finalist Offeror(s)	July 10 – July 21, 2023
11. * Contract Awards	EMNRD/AML/Finalist Offeror(s)	Upon Department of Finance and Administration approval
12.* Protest Deadline	GSD	15 days after Contract Award

\* Dates indicated in Events 7 through 12 are estimates only, and may be subject to change without necessitating an amendment to the RFP.

## C. EXPLANATION OF EVENTS

The following paragraphs describe the activities listed in the sequence of events shown above.

### 1. Issuance of RFP

This RFP is being issued on behalf of EMNRD on the date specified above in Section II, Conditions Governing the Procurement, Paragraph B, Sequence of Events.

### 2. Acknowledgement of Receipt Form

Potential Offerors should e-mail the Acknowledgement of Receipt Form (**APPENDIX A**), to the GSD at [Martin.Kuziel@gsd.nm.gov](mailto:Martin.Kuziel@gsd.nm.gov) to have their organization placed on the procurement

Distribution List. The form must be returned to the GSD by 3:00 pm MST/ MDT on the date indicated on the Sequence of Events.

The procurement distribution list will be used for the distribution of written responses to questions, or any amendments to the RFP. Failure to return the Acknowledgement of Receipt Form does not prohibit potential Offerors from submitting a response to this RFP. However, by not returning the Acknowledgement of Receipt Form, the potential Offeror's representative shall not be included on the distribution list and will be solely responsible for obtaining from the GSD website responses to written questions and any amendments to the RFP.

### **3. Pre-Proposal Conference (Mandatory)**

The AML Program will conduct a mandatory pre-proposal virtual conference for potential Offerors at **1:00 P.M. MDT, May 15, 2023, via Microsoft Teams**. AML Program staff will explain work requirements and answer questions.

The Pre-Proposal Conference gives Offerors a chance to ask questions about the RFP and Project in a public setting so that all potential Offerors receive the same information. All questions must be submitted in writing to the Procurement Manager.

While potential Offerors are encouraged to submit written questions in advance of the Pre-Proposal Conference, additional written questions may also be submitted at the Pre-Proposal Conference.

A public log will be kept of the names of potential Offerors who attended the Pre-Proposal Conference.

This mandatory pre-proposal conference will be conducted via Microsoft Teams. Link below:

**Join on your computer, mobile app, or room device:**

[Click here to join the meeting](#)

**Meeting ID: 256 108 600 031**

**Passcode: hXgwpQ**

**Link:**

[https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_ZTNjZjAxMGYtOGViNS00ZDc0LWE1ZjgtMmMzYmVkZDRlMDU4%40thread.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%22Oid%22%3a%222f00009c-d697-4a33-afd8-cba5473f8149%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZTNjZjAxMGYtOGViNS00ZDc0LWE1ZjgtMmMzYmVkZDRlMDU4%40thread.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%22Oid%22%3a%222f00009c-d697-4a33-afd8-cba5473f8149%22%7d)



#### **4. Deadline to Submit Written Questions**

Potential Offerors may submit written questions to the Procurement Manager as to the intent or clarity of this RFP until the date/time as indicated in the sequence of events. All written questions must be addressed to the Procurement Manager. Questions shall be clearly labeled and shall cite the Section(s) in the RFP or other document which form the basis of the question.

#### **5. Response to Written Questions**

Written responses to written questions in the form of an Amendment will be posted to:  
<https://www.generalservices.state.nm.us/statepurchasing/active-procurements.aspx>

#### **6. Submission of Proposal**

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN THE DATE/TIME INDICATED IN THE TABLE. Proposals received after this deadline will not be accepted. The date and time of receipt will be recorded on each proposal.

Proposals must be addressed and delivered to the Procurement Manager. Proposals must be Sealed and labeled on the outside of the package to clearly indicate that they are in response to the RFP with the RFP name and number shown. Proposals submitted by facsimile, or other electronic means will not be accepted.

A public log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to NMSA 1978, § 13-1-116, the contents of proposals shall not be disclosed to competing potential Offerors during the negotiation process. The negotiation process is deemed to be in effect until the contract is awarded pursuant to this RFP. Awarded in this context means the final required State Agency signature on the contract(s) resulting from the procurement has been obtained.

#### **7. Proposal Evaluation**

An Evaluation Committee will perform the evaluation of proposals. This process will take place as indicated in the sequence of events, depending upon the number of proposals received. During this time, the Procurement Manager may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals. However, proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors. The Procurement Manager and the Evaluation Committee shall prepare an Evaluation Committee Report containing written determinations resulting from the proposal evaluation.

## **8. Selection of Finalists**

The Evaluation Committee will select and the Procurement Manager will notify the finalist Offerors as per Sequence of Events or as soon as possible. A schedule for the oral presentation and demonstration will be determined at this time. If there is a clear decision as to the Offeror who presents the most advantageous proposal, the Committee will not select more than one finalist and will not hold oral presentations.

## **9. Finalize Contractual Agreements**

Any contractual agreement(s) resulting from this RFP will be finalized with the most advantageous Offeror. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror in the time specified, the State reserves the right to finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process.

## **10. Contract Awards**

The Contracts shall be awarded to the Offeror whose proposal is most advantageous to the State of New Mexico, taking into consideration the evaluation factors set forth in this RFP. The most advantageous proposal may or may not have received the most points. The award is subject to appropriate department and State approval.

## **11. Protest Deadline**

Any protest by an Offeror must be timely submitted and in conformance with NMSA 1978, Section 13-1-172 and applicable procurement regulations. As a Protest Manager has been named in this Request for Proposals, pursuant to NMSA 1978, Section 13-1-172 and 1.4.1.82 NMAC, ONLY protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. The 15 calendar day protest period shall begin on the day following the notice of award of contract(s) and will end at 5 p.m. MST/MDT on the 15th day. Protests must be written and must include the name and address of the protestor and the request for proposal number. It must also contain a statement of the grounds for protest including appropriate supporting exhibits and it must specify the ruling requested from the party listed below. The protest must be directed to:

**Protest Manager:** Martin Kuziel  
**Protest Manager E-mail:** [Martin.Kuziel@gsd.nm.gov](mailto:Martin.Kuziel@gsd.nm.gov)

Protests received after the deadline will not be accepted.

### **III. GENERAL REQUIREMENTS**

#### **1. Acceptance of Conditions Governing the Procurement**

Potential Offerors must indicate their acceptance of the Conditions Governing the Procurement section in the Letter of Transmittal in **APPENDIX B**. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in this RFP.

#### **2. Incurring Cost**

Any cost incurred by the potential Offeror in preparation, transmittal, and/or presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror. Any cost incurred by the Offeror for set up and demonstration of the proposed equipment and/or system shall be borne solely by the Offeror.

#### **3. Prime Contractor Responsibility**

Any contractual agreement that may result from this RFP shall specify that the prime Contractor is solely responsible for fulfillment of all requirements of the Contractual agreement with a State Agency which may derive from this RFP. The State Agency entering into a contractual agreement with an Offeror will make payments to only the prime Contractor.

#### **4. Subcontractors/Consent**

The use of subcontractors is allowed. The prime Contractor shall be wholly responsible for the entire performance of the contractual agreement whether or not subcontractors are used. Additionally, the prime Contractor must receive approval, in writing, from the Agency awarding any resultant Contract, before any subcontractor is used during the term of the Contract.

Since the award is made on a quality-based evaluation process, replacement of consultants after award of and prior to the contract execution may cause the Offeror to be disqualified.

#### **5. Amended Proposals**

An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. The Agency personnel will not merge, collate, or assemble proposal materials.

#### **6. Offeror's Rights to Withdraw Proposal**

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request addressed to the Procurement Manager and signed by the Offeror's duly authorized representative. The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

#### **7. Proposal Offer Firm**

Responses to this RFP, including proposal for services, will be considered firm for one hundred eighty (180) days after the due date for receipt of proposals.

## **8. Disclosure of Proposal Contents**

A. Proposals will be kept confidential until negotiations and the award are completed by the Agency. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for material that is clearly marked proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the potential Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements:

B. Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.

C. Confidential data is restricted to:

1. confidential financial information concerning the Offeror's organization;
2. and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, NMSA 1978, Sections 57-3A-1 to 57-3A-7.

**PLEASE NOTE:** The price of products offered or the cost of services proposed **shall not be designated** as proprietary or confidential information.

If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, the State Purchasing Division or the Agency shall examine the Offeror's request and make a written Determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

## **9. No Obligation**

This RFP in no manner obligates FMD to the use of any Offeror's services until a valid written Contract is awarded and approved by appropriate authorities.

## **10. Termination**

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the agency determines such action to be in the best interest of the State.

## **11. Sufficient Appropriation**

Any Contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such terminations will be effected by sending written notice to the Contractor. The Agency's decision as to whether sufficient appropriations and authorizations are available will be accepted by the Contractor as final.

## **12. Legal Review**

The Agency requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror's concerns must be promptly submitted in writing to the attention of the Procurement Manager.

## **13. Governing Law**

This RFP and any agreement with an Offeror which may result from this procurement shall be governed by the laws of the State of New Mexico.

#### **14. Basis for Proposal**

Only information supplied, in writing, by the Agency through the Procurement Manager or in this RFP should be used as the basis for the preparation of Offeror proposals.

#### **15. Contract Terms and Conditions**

The Contract between an Agency and a Contractor will follow the format specified by the Agency and contain the terms and conditions set forth in the **Sample Contract (APPENDIX F)**. However, the Agency reserves the right to negotiate provisions in addition to those contained in this RFP Sample Contract with any Offeror. The contents of this RFP, as revised or supplemented, and the successful Offeror's proposal will be incorporated into and become part of any resultant Contract.

The Agency discourages exceptions from the Contract terms and conditions as set forth in the RFP Sample Contract. Such exceptions may cause a proposal to be rejected as nonresponsive when, in the sole judgment of the Agency, the proposal appears to be conditioned on the exception, or correction of what is deemed to be a deficiency, or an unacceptable exception is proposed which would require a substantial proposal rewrite to correct.

Should an Offeror object to any of the terms and conditions as set forth in the RFP Sample Contract strongly enough to propose alternate terms and conditions in spite of the above, the Offeror must propose specific alternative language. The Agency may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions of the Sample Contract are not acceptable. Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

If an Offeror fails to propose any alternate terms and conditions during the procurement process (the RFP process prior to selection as successful Offeror), no proposed alternate terms and conditions will be considered later during the negotiation process. Failure to propose alternate terms and conditions during the procurement process (the RFP process prior to selection as successful Offeror) is an **explicit agreement** by the Offeror that the contractual terms and conditions contained herein are **accepted** by the Offeror.

#### **16. Offeror's Terms and Conditions:**

Offerors must submit with the proposal a complete set of *any additional* terms and conditions they expect to have included in a Contract negotiated with the Agency.

#### **17. Contract Deviations:**

Any additional terms and conditions, which may be the subject of negotiation (such terms and conditions having been proposed during the procurement process, that is, the RFP process prior to selection as successful Offeror), will be discussed only between the Agency and the Offeror selected and shall not be deemed an opportunity to amend the Offeror's proposal.

#### **18. Offeror Qualifications**

The Evaluation Committee may make such investigations as necessary to determine the ability of the potential Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any potential Offeror who is not a

Responsible Offeror or fails to submit a responsive offer as defined in NMSA 1978, Sections 13-1-83 and 13-1-85.

**19. Right to Waive Minor Irregularities**

The Evaluation Committee reserves the right to waive minor irregularities that do not materially affect the price, scope and content. The Evaluation Committee also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

**20. Change in Contractor Representatives**

The Agency reserves the right to require a change in Contractor representatives if the assigned representative(s) is/are not, in the opinion of the Agency, adequately meeting the needs of the Agency.

**21. Notice of Penalties**

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

**22. Agency Rights**

The Agency in agreement with the Evaluation Committee reserves the right to accept all or a portion of a potential Offeror's proposal.

**23. Right to Publish**

Throughout the duration of this procurement process and Contract term, Offerors and Contractors must secure from the agency written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or agency Contracts deriving from this procurement.

Failure to adhere to this requirement may result in disqualification of the Offeror's proposal or removal from the Contract.

**24. Ownership of Proposals**

All documents submitted in response to the RFP shall become property of the State of New Mexico.

**25. Confidentiality**

Any confidential information provided to, or developed by, the Contractor in the performance of the Contract resulting from this RFP shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Agency. The Contractor(s) agrees to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without the procuring Agency's written permission.

**26. Electronic mail address required**

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail address to receive this correspondence.

## **27. Use of Electronic Versions of this RFP**

This RFP is being made available by electronic means. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the agency, the Offeror acknowledges that the version maintained by the agency shall govern. Please refer to:

[http://www.generalservices.state.nm.us/statepurchasing/ITBs\\_RFPs\\_and\\_Bid\\_Tabulation.aspx](http://www.generalservices.state.nm.us/statepurchasing/ITBs_RFPs_and_Bid_Tabulation.aspx).

## **28. New Mexico Employees Health Coverage**

a. If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the Contract, Offeror must agree to have in place, and agree to maintain for the term of the Contract, health insurance for 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. Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.

c. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information <http://www.insurenwnewmexico.state.nm.us/>.

d. For Indefinite Quantity, Indefinite Delivery Contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); these requirements shall apply the first day of the second month after the Offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

## **29. Disclosure Regarding Responsibility**

a. Any prospective Contractor and any of its Principals who enter into a Contract greater than sixty thousand dollars (\$60,000.00) with any State Agency or local public body for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company:

- 1) is presently debarred, suspended, proposed for debarment, or declared ineligible for award of Contract by any federal entity, State Agency or local public body;
- 2) within a three-year period preceding this offer, has been convicted in a criminal matter or had a civil judgment rendered against them for:
  - a) the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) Contract or subcontract;
  - b) violation of Federal or state antitrust statutes related to the submission of offers; or
  - c) the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property;
- 3) is presently indicted for, or otherwise criminally or civilly charged by any

(federal state or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure;

4) preceding this offer, has been notified of any delinquent Federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.

- a) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
- b) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
- c) Have within a three year period preceding this offer, had one or more Contracts terminated for default by any federal or State Agency or local public body.
  - a. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.
  - b. The Contractor shall provide immediate written notice to the State Purchasing Agent or other party to the Contract if, at any time during the term of the Contract, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.
  - c. A disclosure that any of the items in this requirement exist will not necessarily result in termination of the Contract. However, the disclosure will be considered in the Determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will be grounds for immediate termination of this Agreement pursuant to the conditions set forth in Paragraph 10 of the Contract.
  - d. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.
  - e. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of the Contract. If during the performance of the Contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government



entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the State Purchasing Agent or other party to this Agreement. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the State Purchasing Agent or Central Purchasing Officer may terminate the involved Contract for cause. Still further the State Purchasing Agent or Central Purchasing Officer may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the State Purchasing Agent or Central Purchasing Office.

### **30. System for Award Management (SAM)**

Projects under this RFP will use federal funds and awarded suppliers must be **registered and active** with System for Award Management Systems <http://www.sam.gov/SAM/> and must provide UEI number prior to award and must maintain and active status throughout the term of any contract which may result from this RFP.

## **IV. RESPONSE FORMAT AND ORGANIZATION**

### **A. Delivery**

Potential Offerors shall submit their proposals electronically in PDF format to Martin Kuziel at [Martin.Kuziel@gsd.nm.gov](mailto:Martin.Kuziel@gsd.nm.gov) no later than **4:00 p.m. MDT on June 15, 2023**. 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. FMD shall not accept proposals received after this date and shall make absolutely no exceptions for proposals not received by the appointed time.

The date and time of receipt will be recorded on all proposals. A public log will be kept by the Procurement Manager of the names of all Offer organizations that submitted proposals.

### **B. Number of Copies**

Offerors shall submit only one **proposal** in response to this RFP.

### **C. Proposal Format**

All proposals must be submitted as follows:

Offerors must use page indicators within their PDF document that clearly identify the different sections of the proposal, including by creating a bookmark on the PDF document. Offerors must use a standard 8½ x 11 document. (Larger paper is permissible for charts, spreadsheets, et cetera; however, this will count as two pages when used. Offerors are strongly encouraged to limit their proposals to a maximum of forty (40) pages and to a maximum of 20MB per submission. Exclusions to the page limitation include the letter of introduction, table of contents, covers, proposal summary, appendices, and acknowledgement of amendments (if applicable). Offerors

are strongly encouraged to create the document with a minimum of 12-point font size.

### Proposal Organization

The proposal must be organized and indexed in the following format and must contain, at a minimum, all listed items in the sequence indicated:

- a) Letter of Transmittal – Appendix B
- b) Engineering Proposal Category – Appendix C
- c) Table of Contents
- d) Mandatory Specifications
  - 1. Design Experience & Technical Competence
  - 2. Capacity and Capability
  - 3. Record of Past Performance
  - 4. Proximity/Familiarity
  - 5. Volume of Work
- e) Response to Contract Terms and Conditions (Section C.III.15)
- f) Offeror's Additional Terms and Conditions (Section C.III.16)
- g) Campaign Contribution Form (Appendix D)
- h) Other Supporting Material

Within each section of their proposal, Offerors shall address the items in the order in which they appear in this RFP. All forms provided in the RFP must be thoroughly completed and included in the appropriate section of the proposal. Offerors may attach other materials that they feel may improve the quality of their responses. However, these materials shall be included as items in a separate appendix.

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

## **V. SPECIFICATIONS**

Offerors must respond in the form of a thorough narrative to each specification, unless otherwise specified. The narratives, including required supporting materials will be evaluated and awarded points accordingly.

If an Offeror does not possess the in-house capabilities to perform a component of the Scope of Work, the response should demonstrate 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 Procurement Code procedures and EMNRD contracting requirements.

### **A. TECHNICAL SPECIFICATIONS**

The successful Offeror(s) shall provide all the following as-needed engineering services for abandoned mine lands. Requests for work will be made by means of a Task Order containing a statement of work within the Scope of Work described below.

## 1. DETAILED SCOPE OF WORK (SOW)

Offeror(s) shall be capable of performing all services in the **General Responsibilities, Basic Services, and General Design Services** described below. Offeror(s) may choose which services they are capable of performing in **Specialized AML, Ecological Design and Photogrammetry and Mapping Services**. Proposals shall reflect the types of services performed by the Offeror.

### A. General Responsibilities:

- 1) The successful Offeror(s) shall be responsible for all efforts required to conduct professional services in accordance with guidelines issued by the lead federal Agency, such as OSMRE, EMNRD or by the AML Program.
- 2) All engineering work shall be performed under the direct supervision of a New Mexico Licensed Professional Engineer. Professional surveying services shall be performed under the direct supervision of a New Mexico Licensed Surveyor.
- 3) The AML Program will provide technical assistance and overall Project management through all phases of an identified Project.
- 4) The successful Offeror(s) shall be aware of and comply with regulatory requirements connected with the work.
- 5) The successful Offeror(s) shall initiate, maintain, and supervise all safety precautions and programs concerning the work and shall prepare and submit health and safety plans for the work tasked.
- 6) The successful Offeror(s) shall refer any media inquiries regarding the Project to the AML Program.
- 7) The successful Offeror (s) shall comply with the following implementation procedures:
  - i. The AML Program shall identify proposed Projects for which engineering services are necessary and assign work on an “as-needed” basis under Task Orders. While the AML Program anticipates the need to assign several Task Orders during the term of the contract(s), the AML Program 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. The AML Program at its sole discretion shall determine what work is assigned to which successful Offeror(s).
  - ii. The AML Program shall define individual Task Orders to include: 1) the purpose of the proposed undertaking that requires engineering 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, 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) the AML Program's expectations for the successful Offeror(s) work products and a desired timeline for the delivery of those work products.

- iii. Upon assignment of a specific AML Program Task Order, the successful Offeror(s) shall provide to the AML Program a written narrative describing how the task order SOW will be met, a schedule describing time frames for completing the task order SOW, a budget detailing the cost to complete the task order SOW, equipment/vehicle usages, as well as the personnel, labor rates, and number of hours to be dedicated to the assignment, including any subcontractors. Personnel and subcontractor substitutions shall not occur without the AML Program's prior written approval.
- iv. The AML Program shall review the successful Offeror(s) Task Order response. The successful Offeror(s) shall incorporate the AML Program's review comments into a revised task order response. Upon the AML Program acceptance of the response, the AML Program will issue a written notice to proceed with the Task Order.
- v. The successful Offeror(s) shall provide the AML Program with regular written Task Order status reports with each request for payment, explaining the status of the Project and including, at a minimum, the amount of work completed and the amount of work remaining.

**B. Basic Services.** The successful Offeror(s) shall be responsible for the following services including but not limited to:

- 1) review of existing studies and information on abandoned mine land sites and characterization of existing site conditions and natural resources at and adjacent to work areas;
- 2) review of internal AML professional engineering designs, including technical specifications and drawings;
- 3) conducting abandoned coal and non-coal mine land site assessments;
- 4) coordination of all onsite activities with landowners, land management agencies, and mineral claimants;
- 5) participation in local public meetings and communication with participating agencies, community civic organizations, landowners and other stakeholders;

- 6) review of construction contractor's submittals;
- 7) review of submittals by professional services consultants to implement in design;
- 8) preparation of written reports with findings and recommendations, as the AML Program directs; and
- 9) metadata shall accompany all data received by the successful Offeror(s).

**C. General Design Services.** The successful Offeror(s) shall be responsible for the following services including but not limited to:

- 1) initial reconnaissance survey of Project site to determine site characteristics and issues;
- 2) preparation of technical drawings and technical specifications;
- 3) professional land surveying, topographic surveys, and mapping services;
- 4) conducting surface and mineral ownership determinations, legal surveys of property boundaries and easements;
- 5) preparation of cost estimates and bid schedules for construction work;
- 6) evaluating reclamation and safeguarding alternatives;
- 7) construction observation at construction Project sites;
- 8) post-construction monitoring of AML reclamation sites; and
- 9) development of criteria to be used in monitoring post-construction site conditions.

**D. Specialized AML Services**

The successful Offeror(s) shall be responsible for the following services including but not limited to:

- 1) Inventory – Inventory of abandoned mine land sites, including mine openings, subsidence, mine waste piles, historic structures, and other mine-related features;
- 2) Geotechnical Exploration – Geotechnical exploration at abandoned mine land sites, including but not limited to investigations of surface, subsurface, geological, and hydrogeological conditions at or near abandoned mine features; soil and rock sampling, and field/laboratory testing;

3) Safeguarding Design – Evaluation, design, and construction observation for safeguarding of hazardous coal and non-coal mine openings that conform to EMNRD or other appropriate standards, including backfilled closures; and structural closures at open shafts, adits, stopes and boreholes including: polyurethane foam (PUF) plugs; permanent fencing; rock and block wall bulkheads; concrete caps and plugs; hybrid plugs (such as PUF/concrete and PUF/geosynthetically confined soil); horizontal, sloped and vertical culvert closures; bat compatible closures, such as bat gates, bat cupolas and airflow closures’.

4) Subsidence Mitigation – Investigation and assessment of subsidence features, including development of subsurface and surface characterization programs; determination of failure mechanisms; development of construction recommendations, including ground improvement and stabilization methods; development of construction specifications; and design verification and modification during construction, as required;

5) Underground Coal Mine Fire Characterization – Characterization of underground coal mine fires including but not limited to feature mapping, thermal mapping, temperature measurement, and emissions analysis. Development of construction commendations for mine fire abatement and post-construction monitoring;

6) Slope Stability Analysis and Recommendations – Evaluation and design of slopes that are geotechnically stable, including control of surface water and groundwater, as necessary; erosion and sediment control measures; and appropriate final grading techniques;

7) Environmental Testing and Remediation – Radioactive analyses/testing/remediation; surface and groundwater environmental testing/remediation; heavy metal contamination testing/assessment; acid mine drainage testing and remediation; air quality assessments; and groundwater remediation measures; and

8) Methane Assessments – Methane level assessments at AML sites; and methane emissions reduction recommendations.

**E. Ecological Design Services.** The successful Offeror(s) shall be responsible for the following services including but not limited to:

1) Stormwater Drainage, Geomorphic Land-Forming, Stream, and Ecological Restoration – Stormwater characterization and design of stormwater drainage systems, geomorphic land-forming, stream and ecological restoration, and gob (coal mine waste) pile reclamation sites at abandoned mine sites. Evaluation and design of standard and natural river restoration and drainage stabilization and restoration measures and low-impact development/green infrastructure, including one-rock dams, Zuni bowls, etc. Hydrologic and hydraulic modeling of drainage alternatives and proposals. Preparation or review to ensure compliance with National Pollutant Discharge Elimination System storm water pollution control permits, Section 401/404 permits, and other appropriate permits for the Projects as required for construction to proceed but does not include NEPA work; and

2) Revegetation and Reclamation – Development of site-specific soil/mine waste amendment schedules, erosion and sediment control measures, fertilization measures, seeding methodology and seed and seedling planting mixes. Specification of soil amendments and fertilizers to improve the quality of mine waste piles and abandoned mine areas for planting; planting and protection of seedlings or hydroseeding in Project areas; and specification of mulch products to be applied at reclaimed areas.

## **F. Photogrammetry and Mapping Services**

The purpose of these services is to assist the AML Program with site characterization, feature mapping, aerial mine inventory and Project support. Photogrammetry services may include the operation of uncrewed (unmanned) and/or crewed (manned) aircraft. All flights teams must be Federal Aviation Administration (FAA) certified, may only use Unmanned Aircraft Systems (UAS) equipment listed on the [Blue UAS Cleared Drone List](#), and UAS equipment shall be remote ID compliant. The successful Offeror(s) shall be responsible for the following services including but not limited to:

UAS and Crewed Aircraft Surveys – Deployment of UAS when needed on Project sites for mapping in 2D, 3D, thermal images, or recorded video. A variety of UAS may be requested depending on the purpose of the mission. The UAS may be fixed-winged or rotary depending on the sensor needed and the area of the Project. Sensors needed for Projects may include photogrammetric quality cameras, multispectral, thermal, lidar sensors, and cameras with ability to take oblique photos.

Deliverables - Data includes point clouds for terrain and digital elevation models, high resolution ortho-imagery for mapping, thermal imagery, and site video. Products deliverables include but are not limited to; digital surface and terrain models, digital elevation models, LASer (LAS) data files created from lidar or Structure from Motion photogrammetric processes, or other formats appropriate for use in CADD and ArcGIS software for both 2D and 3D products. Services may include using advanced photogrammetry software to assist with merging several types of point clouds, managing point cloud grids, reprojecting data into several datum and coordinate systems upon request. All data product deliverables shall include metadata describing methods used, platforms, sensor models, and coordinate systems.

## **VI. EVALUATION**

### **A. EVALUATION POINT SUMMARY**

The following is a summary of evaluation factors as related to the Specifications with point values assigned to each. These weighted factors will be used in the evaluation of individual potential Offeror proposals by sub-category.

All Offeror(s) shall be evaluated for the Basic Services, and General Design Services SOW. Offeror(s) will be evaluated on each Specialized AML, Ecological Design and/or Photogrammetry and Mapping Services submitted in the proposal.

[This space intentionally left blank.]



**Table 2: Evaluation Factors and Points**

EVALUATION FACTORS	POINTS
<b>1. Technical Evaluation Factors</b>	
A (1) Design Experience and Technical Competence <ul style="list-style-type: none"> <li>- Basic Services</li> <li>- General Design Services</li> <li>- Specialized AML Services</li> <li>- Ecological Design Services</li> <li>- Photogrammetry and Mapping Services</li> </ul>	40
A (2) Capacity and Capability	20
A (3) Record of Past Performance	20
A (4) Proximity/Familiarity	15
A (5) Volume of Work	5
<b>2. Business Evaluation Factors</b>	
B (1) Letter of Transmittal	Pass/Fail
B (2) Response to Terms and Conditions	Pass/Fail
B (3) Campaign Contribution Disclosure Form	Pass/Fail
B (4) NM Employees Health Coverage Form	Pass/Fail
B (5) Errors and Omissions Insurance Certificate	Pass/Fail
<b>TOTAL MAXIMUM POSSIBLE POINTS:</b>	<b>100</b>

**B. EVALUATION FACTORS**

A brief explanation of each evaluation factor is listed below. Information in one factor category may overlap information in other factor categories. Offerors are encouraged to fully address each factor completely, as points are assigned for responses to each. Responses to the RFP, shall include information and past Project experiences specific to the team submitting the proposal.

**TECHNICAL EVALUATION FACTORS:*****A (1) Design Experience and Technical Competence***

Description of Offeror(s)' service capabilities, years of experience, and proposed team members to complete the SOW.

Offeror must thoroughly describe their design experience and technical competence of the business, regarding the type of services requested in the SOW. Given the specialized nature of Projects, offerors must include a detailed narrative of their technical experience related to Project(s) with similar design elements to the SOW. Offerors must demonstrate their competence to successfully complete

Projects.

Points will be awarded based on the concise, but brief descriptions of Project types, particularly those similar to the SOW, including size, complexity, budget, and schedule. The listed Projects must demonstrate that the Offeror(s), through previously completed work, has developed expertise to provide design services as required for this RFP.

***A (2) Capability and Capacity***

Describe the Offeror(s)' technical and managerial capabilities to complete the SOW. Describe the ability of the team to achieve the technical objectives of the SOW, deliver quality work, stay on schedule, and control costs. Describe the personnel capacity of the team to complete the SOW. Points will be awarded based on Offeror(s)' ability to:

- Substantiate how your team can most effectively undertake responsibilities associated with a potential Project;
- Indicate key personnel to be assigned to this Project, their specific roles, experience, background, and Professional Seal/Certificate Number;
- Clearly identify the lines of authority, coordination, and limits of capacity for each member of the team;
- Identify essential management functions and how these functions are effectively integrated during each phase of the Project; and
- Delineate the role of the subconsultants.

***A (3) Record of Past Performance***

Points will be awarded based on Offeror's descriptions of the following within their Project examples:

- Describe the Offeror(s)' past record of performance on contracts with AML programs, government agencies, or private industry with respect to such factors as control of costs, quality of work, and ability to meet schedules.
- Client references: For each sample Project in paragraph 1.A (1) above, provide the name, email, and phone number of the Owner's Project Manager.

***A (4) Proximity/Familiarity***

Indicate the Offeror's and subconsultants' proximity and familiarity with related Projects in the southwestern United States. The awarded number of points will be determined by the Offeror's and subconsultant's expertise and experience on Southwestern US Projects, particularly with relation to AML Projects and engineering design. The proximity of the Offeror's (and Sub-consultants') office(s) to AML Project sites and the related ability to efficiently respond to Projects will also be considered.

***A (5) Volume of Work***

Using the "Project Listing Form" (**APPENDIX E**), Offeror must thoroughly describe the volume of work previously done for the agency requesting

proposals which is not seventy-five percent complete with respect to basic professional design services, with the objective of effecting an equitable distribution of contracts among qualified businesses and of assuring that the interest of the public in having available a substantial number of qualified businesses is protected; provided, however, that the principle of selection of the most highly qualified businesses is not violated.

Five points will be awarded to Offerors who have no contracts or all contracts are at least 75% complete in respect to professional design services. No points will be awarded if the Offeror has any Project that is less than 75% complete in respect to professional design services.

### **BUSINESS EVALUATION FACTORS:**

#### ***B (1) Letter of Transmittal (Pass/Fail) (APPENDIX B)***

Offeror's proposal must be accompanied by the Letter of Transmittal Form which must be completed and signed by an individual person authorized to obligate the company. All lines must be filled out even if it is the same person for #2-4.

1. Identify the submitting business entity.
2. Identify the name, title, telephone, and e-mail address of the person authorized by the Offeror organization to contractually obligate the business entity providing the Offer.
3. Identify the name, title, telephone, and e-mail address of the person authorized to negotiate the contract on behalf of the organization.
4. Identify the names, titles, telephone, and e-mail addresses of persons to be contacted for clarification/questions regarding proposal content.
5. Identify sub-contractors (if any) anticipated to be utilized in the performance of any resultant contract award. They may be listed on another sheet of paper.
6. Describe the relationship with any other entity not listed above which will be used in the performance of this awarded contract. Either leave blank or indicate 'Not Applicable' if it does not apply.
7. Identify the following with a check mark and signature where required:
  - a. explicitly indicate acceptance of the Conditions Governing the Procurement stated in Section II. C.1;
  - b. explicitly indicate acceptance of Section V of this RFP; and
  - c. acknowledge receipt of any and all amendments to this RFP.
8. Be signed by the person identified in paragraph 2 above.

#### ***B (2) Response to Contract Terms and Conditions (Pass/Fail) (Review Section IV.C)***

- 1) If the Offeror has no response to the contract Terms and Conditions, the Offeror must include a statement to that effect on their letterhead.
- 2) If the Offeror has a response to Offeror's Additional Terms/ Conditions, then the Offeror must list them with responses to each on a letter with the Offeror's letterhead.

***B (3) Campaign Contribution Disclosure Form (Pass/Fail) (APPENDIX D)***

Offeror must complete, sign, and return the Campaign Contribution Disclosure Form as a part of their proposal. This requirement applies regardless whether a covered contribution was made or not made for the positions of Governor and Lieutenant Governor or other identified official. Failure to complete and return the signed unaltered form may result in disqualification.

***B (4) Project Listing Form (Pass/Fail) (APPENDIX F)***

Offer must describe the volume of work previously done for the agency requesting proposals which is not seventy-five percent complete with respect to basic professional design services.

***B (5) Insurance Certificate (Pass/Fail)***

Please refer to Section 29 of the attached draft Professional Services Agreement (**APPENDIX F**) for actual requirements. With this proposal, submit a Certificate of Insurance showing current coverage equal to or greater than what is required in this RFP OR a letter from the insurance company stating the Offeror's capability of obtaining that amount of insurance.

The Selection Committee may choose to waive the Pass/Fail requirement when there is no effect on price, quality or quantity.

**EVALUATION PROCESS**

1. The Procurement Manager may contact the Offeror for clarification of the response.
2. The Selection Committee may use other sources of information to perform the evaluation.
3. Responsive proposals will be evaluated on the factors in Section VI, which have been assigned a point value. The responsible Offerors with the highest scores will be selected finalist Offerors based upon the proposals submitted. The interview questions and invitations will be disseminated about a week before the scheduled interview date. The previous scores will be brought into the Oral Presentation phase and the final score tallied after the interviews.
4. The finalist Offeror(s) with the most advantageous proposal to the State will be offered a contract.
5. Negotiations of fees for the contract will commence. If the negotiations with the first finalist Offeror cannot reach an acceptable agreement, then the Agency may move on to the second finalist and enter negotiations with them.

## **VII. APPENDICES**

**Appendix A – Acknowledgement of Receipt Form**

**Appendix B – Letter of Transmittal Form**

**Appendix C – Engineering Proposal Category**

**Appendix D – Campaign Contribution Disclosure Form**

**Appendix E – Project Listing Form**

**Appendix F – Sample Contract**

## **APPENDIX A: ACKNOWLEDGEMENT OF RECEIPT FORM**

### **REQUEST FOR PROPOSAL**

**XXXXXX**

#### **New Mexico AML Professional Engineering Services**

This optional Acknowledgement of Receipt Form establishes a distribution list to be used for the distribution of written responses to questions, and/or any amendments to the RFP. Failure to return the Acknowledgement of Receipt Form does not prohibit potential Offerors from submitting a response to this RFP. However, by not returning the Acknowledgement of Receipt Form, the potential Offeror's representative shall not be included on the distribution list and will be solely responsible for obtaining from the GSD website responses to written questions and any amendments to the RFP.

The information below will be used for all correspondence related to the Request for Proposal. Only one contact per Offeror is permitted.

ORGANIZATION: \_\_\_\_\_

CONTACT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_ PHONE NO.: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

#### **Submit Acknowledgement of Receipt Form to:**

To: Martin Kuziel

E-mail: [Martin.Kuziel@gsd.nm.gov](mailto:Martin.Kuziel@gsd.nm.gov)

Subject Line: NM AML Professional Engineering Services RFP

## APPENDIX B: LETTER OF TRANSMITTAL FORM

**ITEMS #1 to #4 EACH MUST BE COMPLETED IN FULL (pursuant to Section II.C.30).  
FAILURE TO RESPOND TO ALL FOUR (4) ITEMS MAY RESULT IN THE  
DISQUALIFICATION OF OFFEROR'S PROPOSAL! DO NOT LEAVE ANY ITEM BLANK!**  
(N/A, None, Does not apply, etc. are acceptable responses.)

**RFP#: 30-521-23-06106**

**1. Identify the following information for the submitting organization:**

<b>Offeror Name</b>	
<b>Mailing Address</b>	
<b>Telephone</b>	
<b>FED ID#</b>	
<b>NM CRS#</b>	
<b>SAM Unique Entity Identifier</b>	

**2. Identify the individual(s) authorized by the organization to (A) contractually obligate, (B) negotiate, and/or (C) clarify/respond to queries on behalf of this Offeror:**

	<b>A</b> <b>Contractually Obligate</b>	<b>B</b> <b>Negotiate*</b>	<b>C</b> <b>Clarify/Respond to Queries*</b>
<b>Name</b>			
<b>Title</b>			
<b>E-mail</b>			
<b>Telephone</b>			

\* If the individual identified in Column A also performs the functions identified in Columns B & C, then no response is required for those Columns. If separate individuals perform the functions in Columns B and/or C, they must be identified.

**3. Use of subcontractors (Select one):**

- ☐ No subcontractors will be used in the performance of any resultant contract, OR  
☐ The following subcontractors will be used in the performance of any resultant contract:

\_\_\_\_\_  
(Attach extra sheets, as needed) (List any subconsultants)

**4. Describe any relationship with any entity (such as a State Agency, reseller, etc. that is not a subcontractors listed in #3 above), if any, which will be used in the performance of any resultant contract. (N/A, None, Does not apply, etc. are acceptable responses to this item.)**

\_\_\_\_\_  
(Attach extra sheets, as needed) (**DO NOT LEAVE THIS BLANK!!!**)

**By signing the form below, the Authorized Signatory attests to the accuracy and veracity of the information provided on this form, and explicitly acknowledges the following:**

- On behalf of the submitting-organization identified in item #1, above, I accept the Conditions Governing the Procurement, as required in Section II.C.1. of this RFP;
- I concur that submission of our proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP; and
- I acknowledge receipt of any and all amendments to this RFP, if any.

\_\_\_\_\_, 20\_\_\_\_

Authorized Signature and Date (*Must be signed by the individual identified in item #2.A, above.*)



## APPENDIX C: ENGINEERING PROPOSAL CATEGORY

Please check the Category or Categories of Work which the Bidder proposes to perform:

- ( ) I propose to perform Specialized AML Design Services.
- ( ) I propose to perform Ecological Design Services.
- ( ) I propose to perform Photogrammetry and Mapping Services.

---

Contractor Name

---

License No. (if applicable)

---

Signature

---

Date

---

Print Name

---

Title

---

Address

---

Email

---

Telephone No./Cell No

---

Fax No.

THIS PAGE SHALL NOT BE ALTERED. ALTERATION OF THIS PAGE MAY RESULT IN BID REJECTION.

## **APPENDIX D: CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

### **Campaign Contribution Disclosure Form**

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person 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 shall void an executed contract or cancel a solicitation or proposed award for a proposed contract 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.

**THIS FORM 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 either 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.

“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.

“Person” means any corporation, partnership, individual, joint venture, association or any other private legal

entity.

“Prospective contractor” means a person who 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 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.

**DISCLOSURE OF CONTRIBUTIONS:**

Contribution Made By: \_\_\_\_\_

Relation to Prospective Contractor: \_\_\_\_\_

Name of Applicable Public Official: \_\_\_\_\_

Date Contribution(s) Made: \_\_\_\_\_  
\_\_\_\_\_

Amount(s) of Contribution(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)

## APPENDIX E: PROJECT LISTING FORM

(Complete for Offeror only)

FIRM: \_\_\_\_\_

DATE: \_\_\_\_\_

	PROJECT DIRECTLY AWARDED TO FIRM	AWARD DATE	CONTRACT DATE	AMOUNT	% COMPLETE
1.					
2.					
3.					
4.					
5.					
TOTAL FEES					

Notes:

1. See definitions for calculation of "75% Complete." If any award is not proceeding in contract negotiations, please indicate the status in the "Remarks" below.
2. Fees do not include reimbursable expenses, which include: travel, per diem, printing, telephone or reproduction cost.
3. Federal funds shall be included in project calculations pursuant to 13-1-120B(6).
4. Any Award of Contract that has not resulted in a written contract offer to the Offeror, within six months of written notice, shall not be considered an award for the purposes of the Project Listing Form.
5. Contact the FMD Procurement Manager if there are ANY questions regarding the correct completion of this form. (Use additional sheets if necessary).

## APPENDIX F: SAMPLE CONTRACT

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

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

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 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, 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.

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 that the invoiced 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. 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 Section 4, Termination, or Section 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 Contractor. EMNRD's decision as to whether sufficient appropriations are available shall be accepted by Contractor and shall be final. If EMNRD proposes an amendment to the Agreement to unilaterally reduce funding, Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within 30 days of receipt of the proposed amendment.

## **6. Status of Contractor.**

Contractor and its subcontractors, agents, and employees are independent contractors performing professional services for EMNRD and are not employees of the State of New Mexico. Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. Contractor acknowledges that all sums received hereunder are reportable by Contractor for tax purposes, including without limitation, self-employment and business income tax. 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.**

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

## **8. Subcontracting.**

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

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

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



B. Contractor is required to provide EMNRD with evidence of competitive procurement for any subcontract, including records of advertisement of bid, proposals received, and methods to select each subcontractor.

C. Any subcontract agreement shall include all provisions necessary to allow Contractor 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.*

D. 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 arising from or under this Agreement.

**10. Confidentiality.**

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

**11. Product of Service -- Copyright.**

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

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

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

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

1) in accordance with NMSA 1978, Section 10-16-4.3, Contractor does not employ, has not employed, and will not employ during the term of this Agreement any EMNRD 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) Contractor is not a public officer or employee of the State of New Mexico (State); (ii) Contractor is not a member of the family of a public officer or employee of the State; (iii) Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, 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) Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in EMNRD's making this Agreement;

4) this Agreement complies with NMSA 1978, Section 10-16-9(A) because (i) Contractor is not a legislator; (ii) Contractor is not a member of a legislator's family; (iii) Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, 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, 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), 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 EMNRD and Contractor entered 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. If EMNRD later determines 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 addition to other remedies available to EMNRD and notwithstanding anything in this Agreement to the contrary, EMNRD may immediately terminate this Agreement.

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

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

**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 exclusive 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.**

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. 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.**

Contractor shall defend, indemnify, and hold harmless EMNRD, its officers, employees, agents, and representatives, and the State of New Mexico from all actions, proceedings, 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 Contractor or its officers, employees, servants, subcontractors, consultants, or agents, or caused by the actions of any client of Contractor resulting in injury or damage to persons or property during the time when Contractor, Contractor's officers, agents, employees, servants, consultants, or subcontractors 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 other liability or expense which may arise out of the performance of this Agreement is brought against Contractor or its officers, employees, servants, subcontractors, consultants, or agents, Contractor shall, as soon as practicable but no later than two days after it receives notice thereof, notify EMNRD's legal counsel, 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 *et seq.*

**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 this Agreement's term, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 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 facsimile number, or such other address or facsimile number as such party may hereafter specify by written notice to the other given by courier, by United States certified or registered mail, by facsimile, 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]

Deputy 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 and Contractor represent and warrant 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 inapplicable clauses.)

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

A. Compliance with use of Minority Business Enterprises (MBEs) and Women's Business Enterprises (WBEs) - 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 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.

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 200.326 for procurement of property or services 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 regulatory 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.

**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, Sections 52-1-1 *et seq.*, 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.

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, Sections 41-5-1 *et seq.* (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).

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: \_\_\_\_\_  
Cabinet Secretary or Designee

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Legal Counsel - Certifying legal sufficiency

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Chief Financial Officer

Date: \_\_\_\_\_

**CONTRACTOR NAME**

By: \_\_\_\_\_  
Authorized Representative Signature

Date: \_\_\_\_\_

\_\_\_\_\_  
Printed Name and Title

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

By: \_\_\_\_\_  
GSD/SPD Contracts Review Bureau

Date: \_\_\_\_\_

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: \_\_\_\_\_

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

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