

**REQUEST FOR PROPOSALS  
FOR RULEMAKING SUPPORT SERVICES  
ISSUED BY THE STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT,  
OIL CONSERVATION DIVISION**

**I. PURPOSE OF THIS REQUEST FOR PROPOSAL**

The State of New Mexico, Energy, Minerals and Natural Resources Department (EMNRD), Oil Conservation Division (OCD), seeks an individual or firm (Offeror) that is capable of helping OCD apply for and obtain primacy over the permitting, administration, and oversight of Class VI carbon dioxide sequestration wells (Class VI Wells) from the United States Environmental Protection Agency (EPA) pursuant to the applicable requirements of Federal Safe Drinking Water Act (SDWA), 42 U.S.C. 300f *et seq.*, and other applicable federal laws rules and regulations. Given the complexity of the process, OCD seeks potentially multiple Offerors capable of completing the tasks outlined in Section III, Scope of Work, below to provide the support necessary to assist OCD through the entirety of the Class VI primacy process. OCD anticipates needing a mix of technical and legal services necessary to successfully complete this process.

All work contemplated under this Request for Proposals (RFP) will be on a task order (Task Order) basis. A written Task Order shall define the scope of work necessary to conduct the designated activity. Items that may be included in any individual Task Order are: research, drafting memos, development of rulemaking packages, preparation of filings to state boards or commissions and the EPA, providing expert and technical witness support at necessary rulemaking hearings, and other related-activities as determined by OCD.

Any proposal which may result from this RFP shall be valid for one year from proposal due date specified in Section VII, Contact Person and Due Dates.

**II. ELIGIBLE OFFERORS**

Offerors must have the necessary technical or legal experience and expertise, as appropriate, to complete the tasks identified on which they submit a proposal. At minimum, potential Offerors shall have at least five years of experience working on Class VI or related issues under the SDWA. All Offerors must demonstrate competency in understanding and applying the applicable laws and requirements relevant to the tasks for which they submit a proposal. For any tasks specifically seeking legal services, potential offerors must have expertise in all phases listed in the scope of work and have: (i) at least 10 years of experience working environmental or natural resources related issues, and (ii) be licensed by the Supreme Court of New Mexico.

### **III. SCOPE OF WORK**

The successful Offeror(s) shall be able to provide support in any one of the following task areas necessary to assist the OCD with developing and supporting the adoption of rules necessary to establish and regulate Class VI UIC wells within the state of New Mexico injection. Offerors may provide costs for all tasks below or for a subset of individual tasks. Potential Offeror(s) must provide either a fixed cost estimate for the task(s) on which they bid, or an hourly rate at which they intended to bill for the task(s) on which they bid.

#### **A. Task 1: Class VI Research and Planning**

1. Develop a proposed plan of action and time schedule for Class VI primacy process, including any associated rule development and recommendation about the most appropriate New Mexico rulemaking body. Such plan shall be based on factors deemed relevant by potential Offeror, but shall at a minimum consider the following.
  - i. Review existing New Mexico statutes rules, regulatory bodies.
  - ii. Research, review, and compare other states Class VI statutes rules or regulations.
  - iii. Interview relevant OCD Personnel to understand current regulatory framework.
2. Hold preliminary planning meetings with EPA regarding the Class VI primacy application process, including keys aspects of successful Class VI application.
3. Participate in other meetings with OCD and other parties, as directed.
4. Identify any necessary rule or statutory changes
5. Identify any necessary technical our staffing resource needs within OCD to implement a Class VI program.

#### **B. Task 2. Class VI Rule Development**

1. Develop a Class VI rule making package for promulgation by the OCD, with the draft addressing at a minimum all application EPA Class VI requirements, including:
  - i. well location selection and supporting characterization data;
  - ii. required well construction criteria;
  - iii. permit requirements related to an approved well operation;
  - iv. public notice and involvement requirements;
  - v. initial and operational monitoring and testing;
  - vi. long-term monitoring including post closure;
  - vii. financial assurance procedures;
  - viii. incorporation of appropriate environmental justice principles;
  - ix. possible funding mechanisms for the program;
  - x. data management and EPA reporting; and,

- xi. any other items required by EPA or OCD (to the extent practicable, the draft rules must track EPA rules for Class VI wells or at least be cross walked to those rules).
2. Meet regularly with OCD to track rule development progress, which must track the schedule developed under Task 1, with any deviations flagged for OCD.
3. Submit draft rules electronically to OCD in Word or Word compatible format so that they can be reviewed and commented upon by OCD. OCD retains sole discretion as to the content of any draft of final rule text.

**C. Task 3: Stakeholder Education and Engagement**

1. Develop written recommendations for OCD concerning stakeholder process to provide general education about carbon sequestration and the Class VI process and to solicit input on draft rules developed under Task 2.
2. Host and participate in stakeholder meetings. Such participation shall include at a minimum meeting implementation (e.g., obtain facilities, note taking, etc.), technical presentations, and other tasks as directed by OCD, such stakeholder meetings will be held in a hybrid format and may involve members of the general public, other state or federal agencies, or local bodies or any subset of the foregoing.

**D. Task 4: Proposed Rule Development**

1. Identify key issues raised by stakeholders, including the oil and gas industry, environmental organizations, and the public, on the draft rules.
2. Revise draft rules in response to stakeholder input.
3. Coordinate with OCD and other identified agencies during proposed rule development.
4. Attend other meetings with OCD and others as directed by OCD, such attendance may include technical presentations and general meeting support as directed by OCD.

**E. Task 5: EPA Preapplication Review Package**

1. Develop a preapplication Class VI application review package for the EPA that contains both the proposed rules and any other technical information required by the EPA to obtain Class VI primacy.
2. Participate in meetings with OCD, EPA, and others as necessary and as directed by OCD. Participation may include technical presentations and general meeting support as directed by OCD.
3. Revise proposed rules based on any feedback from the EPA.

**F. Task 6: Undertake State Level Class VI Rulemaking**

1. Support OCD and EMNRD's Office of General Counsel to petition to the relevant rulemaking bodies to approve the proposed rules, including:

- i. developing testimony and exhibits to support proposed rules in consultation with OCD;
  - ii. developing high level economic overview of proposed rules in consultation with OCD; and
  - iii. reviewing prehearing statements.
2. Attend rulemaking hearing and present testimony at rule making hearings at before the appropriate regulatory body.
3. Assistance OCD in developing and preparing any post-hearing pleadings, including supporting any subsequent litigation related to same.
4. Participate in meetings with OCD and others as necessary and as directed by OCD.

**G. Task 7: Formal Class VI Application for Submittal to EPA**

Under this task , successful Offeror(s) shall:

1. perform the necessary analyses or respond to requests to support OCD during EPA's review and evaluation, including, at a minimum during the following phases:
- i. EPA's completeness review and determination;
  - ii. EPA's application evaluation; and
  - iii. EPA's federal rulemaking and codification.
2. Participate in meetings with OCD and others as necessary and as directed by OCD. Participation may include technical presentations and general meeting support as directed by OCD.

**H. Task 8: Identify Potential State-Level Legislative Changes Necessary to Support a Successful Class VI Program**

1. Make recommendations to OCD about statutory changes to address:
- i. the ownership and management of pore space in New Mexico;
  - ii. the long-term oversight of and responsibility for sequestered carbon dioxide and other injected constituents; and
  - iii. any other issues identified by OCD or the Offeror as relevant to either carbon sequestration, Class VI primacy, or pore space management.

**I. Task 9: General Legal Support**

Provide legal advice and feedback to OCD on:

- i. aspects of any of the tasks identified above as directed by OCD;
- ii. other issues that may arise generally under the Oil and Gas Act NMSA 1978, §§70-2-1 *et seq.*] or the Water Quality Act, NMSA 1978, Section 74-6-1 *et seq.*;

- iii. enforcements of rules under the Oil and Gas Act or the Water Quality Act; and
- iv. issues related to the management of UIC wells, including without limitation Class VI wells.

#### **IV. PROPOSAL FORMAT AND CONTENTS**

Proposals must contain sufficient information to provide OCD with a thorough description of the Offeror's qualifications to accomplish the activities described in the Scope of Work that the Offer is bidding on. The proposal **MUST** be on 8.5 x 11-inch paper and contain, at a minimum, all listed items in the sequence indicated and be organized in the following format.

1. Letter of transmittal that:
  - a. identifies the name, title, telephone and fax numbers, and e-mail address of the person authorized to negotiate the contract on behalf of the Offeror;
  - b. identifies the names, titles, telephone and fax numbers, and e-mail addresses of persons to be contacted for clarification;
  - c. contains state tax identification number;
  - d. explicitly indicates acceptance of the terms and conditions of this RFP and its evaluation factors;
  - e. acknowledges receipt of all amendments to this RFP (if any); and
  - f. is signed by the person authorized to contractually obligate the Offeror.
2. Listing of qualifications, experience, education, and knowledge (refer to Proposal Evaluation Criteria).
3. A budget for each of the task(s) a potential Offeror(s) is bidding on, each budget must provide either a fixed cost estimate for the task(s) bid on, or an hourly rate at which they intended to bill for the task(s) on which they bid. For hourly bids, an estimate of potential costs to the extent it can be provided would be helpful for response review.
4. Signed Statement of Assurances (Attachment 1).
5. Completed, signed Campaign Contribution Disclosure Form (Attachment 2). Offeror shall complete, sign, and submit with Offeror's proposal response the Campaign Contribution Disclosure Form and disclose whether Offeror, a family member, or a representative of the Offeror has made a campaign contribution to an applicable public official during the two years prior to the RFP. Offeror shall complete the non-disclosure statement or make separate disclosures for all campaign contributions given by (a) the Offeror, (b) a family member, or (c) a representative of the Offeror.

6. OCD may use a mix of state and federal funds to support work under this RFP, Offeror must submit an acknowledgement that it agrees to submit/prepare any additional compliance documents required under federal law or by related grant programs to the extent such funding is used to support work outlined above.

7. References - Offerors must provide a minimum of two business references from similar contract services performed for private, state, or large local government clients within the last three years. Offerors are required to submit the Reference Questionnaire (Attachment 3) to the business references they list. The business references must submit the Reference Questionnaire directly to the EMNRD Contact Person listed in Section VIII below. Offerors are responsible for ensuring that the completed forms are received by or before the proposal submission deadline for inclusion in the evaluation process. Business references that are not received, or are not complete, may adversely affect the Offeror's score in the evaluation process. The Evaluation Team may contact any or all business references for validation of information submitted.

8. OCD may deem any proposal that does not adhere to these requirements as nonresponsive and reject it on that basis.

## V. CRITERIA AND EVALUATION POINT SUMMARY

OCD shall evaluate proposals based on how the project categories correlate with program objectives, given the possible points outlined below as specified below:

<b>Evaluation Criteria</b> <i>(Note: Evaluation Criteria vary depending on Task – some criteria apply only to Tasks 1-8 and others are for Task 9.)</i>	<b>Points</b>
Experience: (1) Analyzing complex regulatory programs, (2) Developing administrative rules and legislative recommendation for governmental agencies, and (3) Presentation of expert testimony in administrative, judicial or legislative proceedings generally, and more specifically in support of administrative rules enacted by for governmental agencies. <i>For (1) through (3) above this can be for the public or the private sector entities.</i>  <b>Note: Relevant to Tasks 1-8</b>	30
UIC regulatory experience, including rule drafting, review and evaluation relevant to:  (1) UIC Class I, and II experience, (2) UIC Class III-V, and (2) UIC Class VI experience.  <b>Note: Relevant to Tasks 1-8</b>	20

<b>Evaluation Criteria</b> <i>(Note: Evaluation Criteria vary depending on Task – some criteria apply only to Tasks 1-8 and others are for Task 9.)</i>	<b>Points</b>
Staff qualifications – education, background and experience  <b>Note: Relevant to Tasks 1-8</b>	20
Experience working for Governmental entities: (1) Analyzing complex regulatory programs, (2) Developing administrative rules and legislative recommendation for governmental agencies, and (3) Presentation of expert testimony in administrative, judicial or legislative proceedings generally, and more specifically in support of administrative rules enacted by for governmental agencies.  <b>Note: Relevant to Tasks 1-8</b>	10
Offeror's experience with law related to oil and gas, natural resources, or general state agency practice, both within New Mexico and elsewhere.  <b>Note: Relevant to Tasks 9</b>	40
Offeror's experience with counseling state agencies, administrative hearings, or administrative rulemakings  <b>Note: Relevant to Tasks 9</b>	20
The potential need to waive/evaluate conflicts because of Offeror's representation of other clients.  Offeror shall disclose any potential conflicts (either actual or potential) representing the Parties and points will be awarded based on the lack of such conflicts  <b>Note: Relevant to Tasks 9</b>	20
Offeror's hourly rate or fixed cost estimate  Points will be awarded based on overall rate structured.  <b>Note: Relevant to All Tasks</b>	15
Offeror's other costs.  Points will be awarded based on an evaluation of the potential costs Offeror intends to pass through in connection with work under this RFP.  <b>Note: Relevant to All Tasks</b>	15
<b>Maximum Possible Points</b>	<b>110</b>

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

## **VI. EVALUATION PROCESS**

The evaluation process will follow the steps listed below:

1. Three Evaluation Team members will document contents of competitive sealed proposals after the submittal deadline.
2. The Evaluation Team will review proposals for compliance with the mandatory requirements stated within this RFP. Proposals deemed non-responsive will be eliminated from further consideration.
3. The OCD Contact Person may contact Offerors for clarification of the proposal.
4. The Evaluation Team will evaluate responsive proposals based on the criteria in Section V and will select responsive Offeror(s) with the highest total scores as finalist Offeror(s). The Evaluation Team will select the finalist Offeror(s) whose proposal and references is/are most advantageous to OCD, for award.

## **VII. CONTRACT AWARD AND DURATION**

OCD may award multiple contracts under the terms of the attached draft Professional Services Agreement (PSA) (Attachment 4) and in accordance with this RFP. Any PSA awarded as a result of this RFP shall not be binding until approved by the General Services Department, State Purchasing Division, Contracts Review Bureau. The contract period shall extend from the date of contract approval by the Contracts Review Bureau, and shall last no longer than four years, including amendments.

## **VIII. CONTACT PERSON AND DUE DATES**

The EMNRD Contact Person for this procurement is:

Ward Rikala, Administrative Supervisor  
EMNRD, Oil Conservation Division, Wendell Chino Building  
1220 South Saint Francis Drive  
Santa Fe, NM 87505  
Telephone: (505) 584-0170  
[Ward.Rikala@emnrd.nm.gov](mailto:Ward.Rikala@emnrd.nm.gov)

Offerors shall direct any questions regarding this RFP to Mr. Rikala at the address indicated. The Oil Conservation Division will only respond to written questions regarding this RFP. Written answers to those questions will be sent to all who request copies of this RFP and will also be posted on OCD's website as specified below.

Any inquiries or requests regarding this procurement must be submitted in writing to the



OCD Contact Person listed above. Offerors may contact ONLY the Contact Person regarding this RFP. Other state employees or Evaluation Committee members do not have authority to respond on OCD's behalf.

### **Deadlines for Written Questions**

Potential Offerors may submit written questions to the Contact Person as to the intent or clarity of this RFP until **4 p.m. MST on January 15, 2024**. All written questions must be addressed to the Contact Person as indicated above. In the event questions are mailed, they must be physically received at the above location by the stated date and time to be considered. Questions shall be clearly labeled and shall cite the Section(s) in the RFP or other document which form the basis of the question.

OCD will post written responses to such questions on OCD's website as the questions are received – <https://www.emnrd.nm.gov/ocd/rfps/>.

### **Proposal Submittal and Due Date**

Potential Offerors shall submit their proposals electronically in PDF format to Mr. Rikala at the above email address no later than 5 p.m. MST on January 31, 2024. Proposals must be submitted in the format specified above in Section IV, Proposal Contents and Format. Proposals must be received by the stated date and time to be considered. EMNRD shall not accept proposals received after this date and shall make absolutely no exceptions for proposals not received by the appointed time.

### **Protest Period**

Pursuant to NMSA 1978, Section 13-1-172 and applicable procurement rules, Offerors who are not selected have the right to timely protest the procurement. Protests must be written and must include: the name and address of the protestor and the name of the procurement being protested; a statement of the grounds for protest including appropriate supporting exhibits; and the ruling requested from EMNRD. The protest period begins on the day after notice of selection/non-selection and ends at 5 p.m. 15 days later. Protests must be delivered to: Gerry Razatos, Deputy Director, EMNRD Oil Conservation Division, 1220 S. St. Francis Drive, Santa Fe, NM, 87505, [GerasimosX.Razatos@emnrd.nm.gov](mailto:GerasimosX.Razatos@emnrd.nm.gov).

## **IX. NOTICES**

Award of agreements is contingent upon sufficient appropriations and authorization being made by the State of New Mexico and the U.S. Environmental Protection Agency.

The money made available to support any contract as a result of this RFP must cover Gross Receipts Taxes or Governmental Gross Receipts Taxes as a component of the total contract amount.

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

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

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

**Attachment 1**  
**STATEMENT OF ASSURANCES FORM**

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

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

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

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

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

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

New Mexico Employees Health Coverage:

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

Offeror agrees to maintain a record of the number of employees who have:

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

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

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

Application of New Mexico Preference Laws:

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

\_\_\_\_\_  
Offeror Signature

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

Offeror's Printed Name and Title: \_\_\_\_\_

## Attachment 2

### CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, NMSA 1978, Sections 13-1-28, *et seq.*, and NMSA 1978, Section 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor seeking to enter a contract with any state agency or local public body must file this form with that state agency or local public body.

This form must be filed even if the contract qualifies as a small purchase or a sole source contract.

The prospective contractor must disclose whether they, a family member, or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member, or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to NMSA 1978, Section 13-1-181 or a contract that is executed may be ratified or terminated pursuant to NMSA 1978, Section 13-1-182 of the Procurement Code if:

- 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process; or
- 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

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

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

The following definitions apply:

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

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

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

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

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

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

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

**DISCLOSURE OF CONTRIBUTIONS:**

<b>Contribution Made By:</b>			
<b>Relation to Prospective Contractor:</b>			
<b>Name of Applicable Public Official:</b>		Governor Michelle Lujan Grisham	
<b>Contribution(s) Date(s)</b>	<b>Contribution Amount(s):</b>	<b>Nature of Contribution(s):</b>	<b>Purpose of Contribution(s):</b>
	\$		
	\$		
	\$		
	\$		
	\$		

(Attach extra pages if necessary)

Signature: \_\_\_\_\_

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

Title/Position: \_\_\_\_\_

**--OR--**

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

Signature: \_\_\_\_\_

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

Title/Position: \_\_\_\_\_

**Attachment 3**

**REQUEST FOR PROPOSALS  
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ISSUED BY THE STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT,  
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**REFERENCE QUESTIONNAIRE**

**Name of Individual/Entity**

**Requesting Reference:**

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

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

This form is being submitted to you for completion as a business reference for the individual or entity above. Please return this completed form directly to Ward Rikala, Oil Conservation Division, Energy, Minerals and Natural Resources Department, 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, Telephone: (505) 584-0170, e-mail: Ward.Rilaka@emnrd.nm.gov no later than 5 p.m.MST on January 18, 2024. Do not return this form to the individual or entity requesting the reference.

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

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

**Contact Name and  
Title/Position:**

**Contact Telephone  
Number:**

**Contact E-Mail Address:**

**QUESTIONS**

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

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

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**REFERENCE QUESTIONNAIRE**

3 – Excellent _____	2 – Satisfactory _____	1 – Unsatisfactory _____	0 – Unacceptable _____
Comments:			
3. How would you rate the Offeror's flexibility relative to changes in the project scope and timelines? (Check one)			
3 – Excellent _____	2 – Satisfactory _____	1 – Unsatisfactory _____	0 – Unacceptable _____
Comments:			
4. What is your level of satisfaction with hard-copy materials produced by the Offeror? (Check one)			
3 – Excellent _____	2 – Satisfactory _____	1 – Unsatisfactory _____	0 – Unacceptable _____
Comments:			
5. How would you rate the dynamics/interaction between the Offeror and your staff? (Check one)			
3 – Excellent _____	2 – Satisfactory _____	1 – Unsatisfactory _____	0 – Unacceptable _____
Comments:			
6. Who were the Offeror's principal representatives involved in your project and how would you rate them individually? Would you comment on the skills, knowledge, behaviors, or other factors on which you based the rating? (3 – Excellent; 2 – Satisfactory; 1 – Unsatisfactory; 0 – Unacceptable)			
Principal Representative Name:		Rating: _____	
Principal Representative Name:		Rating: _____	
Principal Representative Name:		Rating: _____	



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**REFERENCE QUESTIONNAIRE**

Principal Representative Name:

Rating: \_\_\_\_\_

Comments:

7. How satisfied are you with the products developed by the Offeror? (Check one)

3 – Excellent \_\_\_\_\_

2 – Satisfactory \_\_\_\_\_

1 – Unsatisfactory \_\_\_\_\_

0 – Unacceptable \_\_\_\_\_

Comments:

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

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

10. Would you recommend this vendor's services to your organization again? (Please explain)

**Attachment 4**

**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 or travel expenses exceeding the total compensation amount without this Agreement being amended in writing prior to those services exceeding the total compensation amount being provided.

B. (For single-year contract, may need to tweak the first sentence.) Payment in FYXX, FYXX, and FYXX is subject to availability of funds pursuant to Section 5, Appropriations, set forth below and to any negotiations between the parties from year to year pursuant to Section 1, Scope of Work, and to approval by GSD/SPD. EMNRD must receive all invoices no later than 15 days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

C. (To be negotiated at EMNRD's discretion. Travel payment language does not apply when choosing to pay Contractor on a lump sum basis. Travel payment language also does not apply when paying on a deliverables basis unless the travel is set out as a separate item.) EMNRD shall pay such travel expenses as may be incurred, and that are necessary for, the performance of this Agreement at the rates established in the New Mexico Per Diem and Mileage Act, 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 invoice services, or expenses are not acceptable, within 30 days of receipt of written notice from Contractor that payment is requested for services received, EMNRD shall provide Contractor a letter of exception explaining the defect or objection to the invoice, services, or expenses, and outlining steps Contractor may take to provide remedial action. Upon certification by EMNRD that the invoice, services, or expenses have been received and accepted, EMNRD shall tender payment to Contractor within 30 days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, EMNRD shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

### 3. 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 10-16-9(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 10-16-9(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 following 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 conducted pursuant to this Agreement.

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

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

as parties declared ineligible under statutory or regularity authority other than Executive Order 12549.

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

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

**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. (Optional)

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

5) Medical malpractice liability insurance that complies with the Medical Malpractice Act, NMSA 1978, 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: \_\_\_\_\_ Date: \_\_\_\_\_  
GSD/SPD Contracts Review Bureau

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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